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CONSTITUTIONAL CONVENTION

OF THE

STATE OF MARYLAND

Chamber of the House of Delegates

State Capitol

Annapolis, Maryland

December 13, 1967 - 10:10 a.m.

HONORABLE H. VERNON ENEY,
PRESIDENT

Reported by:
Dorothy Fitzgerald

1 THEPRESIDENT: The Convention will please come
2 to order.

3 The invocation this morning will be offered by
4 the Reverend Richard C. Hubbard of Grace Methodist Church
5 in Cambridge.

6 Reverend Hubbard is Delegate Malkus' Minister.

7 Reverend Hubbard.

8 REVEREND HUBBARD: May we bow our heads together.

9 Eternal God, our Father, Father of all mankind,
10 we pause this moment at the beginning of another work day
11 of this Constitution Convention to ask Thy blessing and
12 Thy guidance upon the work that will be done and upon the
13 dicated men and women who will do it.

14 It is with humbleness and gratitude we realize
15 the great good fortune that is ours in being citizens of
16 this free state -- such a strong word to describe our
17 political entity; freedom for all men, to live, to
18 work, to speak, to worship.

19 Over the long years we have lived under a
20 Constitution that has guaranteed us these vital freedoms.
21 Now these good people have been long gathered in a great

1 constructive effort to upgrade that Constitution so that
2 it becomes a yet more workable and effective instrument
3 for the government of our State and for the well being
4 of all of its people, and for the preservation of these
5 vital freedoms.

6 May each of these here gathered for this purpose
7 feel the burden of responsibility that has been given them
8 by their Constitution, may they feel the honor of that
9 burden, and may they each, seeking thy help and they guidance,
10 bring to the business of this day, their best mind --
11 their best judgment and their best dedication to a great
12 task.

13 In all things may they be tolerant, each of the
14 other man's opinion, and be welded together in a single
15 fellowship dedicated to the strengthening of our great State.

16 Out of the work they do, the hours of time they
17 spend, the judgments they must make, may they forge a
18 Constitution for the State of Maryland that will be fair
19 and just and reasonable for many years to come.

20 God bless this Constitution Assembly, and keep
21 its members and their people in Thy love and care. Amen.

1 THE PRESIDENT: Roll call.

2 (Whereupon, a roll call was taken)

3 THE PRESIDENT: Has every delegate answered
4 roll call?

5 Has every delegate answered roll call?

6 The Clerk will record the roll call.

7 The Chair recognizes Delegate Powers.

8 DELEGATE POWERS: Mr. President, I move that
9 today's calendar be amended so as to permit resumption
10 of Committee Recommendation No. R&P-1 and as so amended, I
11 move that the daily calendar agenda be adopted.

12 (The motion was seconded.)

13 THE PRESIDENT: All in favor signify by saying
14 Aye; contrary No.

15 The Ayes have it and the calendar as amended
16 is adopted.

17 Reports of committees.

18 There are no reports of committees, but there
19 are two memoranda.

20 The Clerk will read the memoranda.

21 MR. QUILLEN: "Memorandum in support of Section 10

1 of Committee Recommendation R&P-2 by Delegate E. Churchill
2 Murray.

3 THE PRESIDENT: The memorandum will be received
4 and distributed.

5 There is another memorandum by Delegate Freedlander.
6 The Clerk will read it.

7 MR. QUILLEN: Memorandum in support of ommitting
8 GP-4, a provision on consuemr protection by Delegate
9 Freedlander.

10 THE PRESIDENT: The memorandum will be received
11 and distributed.

12 Are there any committee recommendations or
13 reports?

14 THE CLERK: No.

15 THE PRESIDENT: Delegate Gallagher handed
16 me a letter he received from Delegate Bushong. I will read
17 parts of it.

18 "I am still being checked out here at the hospital
19 and so far they have found out that I have an underactive
20 thyroid, and I think it is being taken care of. The main
21 thing is that I was losing weight and this is now all right.

1 I expect to be out of here sometime this week. I will
2 get down there as soon as I can." Signed, "Stewart Bushongg."

3 The Chair recognizes Delegate Ulrich.

4 DELEGATE ULRICH: On behalf of Delegates Anderson,
5 Neilson, and myself, we would like to welcome in the
6 balcony 111 students from the North Glen Elementary School,
7 their teachers, Mrs. Perkins, Mrs. Pearson, Mrs. Harris
8 and Mr. Muntain. I would like the Convention to welcome
9 them at this time.

10 THE PRESIDENT: Delighted to have them. (Applause)

11 Item 7 on the Agenda, second reading of
12 committee recommendations or reports, and Item 9 on the
13 agenda is consideration of report by the Committee of the
14 Whole, which will be taken up this afternoon after the lunch
15 recess.

16 The Chair recognizes Delegate Powers.

17 DELEGATE POWERS: Mr. President, I move the
18 Convention resolve itself into a Committee of the Whole
19 for the purpose of considering the general orders of the day.

20 (The motion was seconded)

21 THE PRESIDENT: All in favor signify by saying Aye;

1 The Ayes have it and it is so ordered.

2 (The mace was removed by the Sergeant at Arms.)

3 (Whereupon, at 10:20 a.m., the Convention resolved
4 itself into the Committee of the Whole.)

5 THE CHAIRMAN: The Committee of the Whole will
6 please come to order.

7 The Committee of the Whole will resume considera-
8 tion of Committee Recommendation R&P-1 under Debate Schedule
9 10.

10 We had concluded consideration of Committee
11 recommendations section by section and are now ready for
12 consideration of Minority Report R&P 1-B.

13 The Chair recognizes Delegate Bothe to present
14 the minority report.

15 DELEGATE BOTHE: Ladies and gentlemen of the
16 Committee of the Whole: R&P 1-B, which I am presenting here
17 today is a report of a near majority of the Committee on
18 Personal Rights and Preamble advocating that the new Consti-
19 tution contained a provision for the right to organize
20 and bargain collectively.

21 We of the Minority feel that this right is

1 as fundamental, as necessary as any of those contained in
2 the Declaration of Rights which we have for the most part
3 adopted in this Convention, that it is co-extensive and
4 correlated with the rights of free speech and assembly
5 and that it is just as necessary and moreso today than the
6 prohibitions in our Constitution written 100 years ago
7 against involuntary servitude and more direct means of keep-
8 ing people under the domination of others.

9 We have, during the past weeks, spoken of many
10 things which belong in or should be out of a Constitution.
11 At this juncture of our deliberations, although I never had
12 any doubts of the appropriateness of a right to organize
13 and bargain collectively in the Constitution, I have utterly
14 none whatever, we have in the new Constitution given space
15 to the spirit of conservation, we have mandated that the
16 consumers shall be protected against unfair business
17 practices, we have decreed that elected officials be honest,
18 we have been assured that farmers will not be dispossessed
19 of their lands by unfair taxation and yesterday we determined
20 that while people may be incarcerated pending trial, that
21 their property must be compensated for when it is damaged.

1 By comparison, the right to organize and bargain
2 collectively is a most real and most operative provision
3 in which this Constitution can accomplish something for
4 the people of the State that is meaningful and that has long
5 been neglected.

6 The amendment which the Minority will propose to
7 you will read as follows:

8 Employees shall have the right to organize and
9 bargain collectively through representatives of their own
10 choosing.

11 The concept of the right of employees to organize
12 and to bargain collectively has evolved painfully through
13 many years. At the time that our last Constitution was
14 composed, quite the opposite view prevailed and it was felt
15 that the employer had the absolute right to do what he
16 pleased with his property, including his employees.

17 I would like to read to you one paragraph which I
18 took out of the Dred-Scott case which was decided in
19 1857, just ten years before our present Constitution was
20 written, in which Chief Justice Taney, in that very famous
21 opinion, said, "That the right of property in a slave is

1 distinctly and affirmatively expressed in the Constitution,
2 the right of traffic in it, like an ordinary article of
3 merchandise and property was guaranteed to the citizens of
4 the United States and the Government in express terms has
5 pledged to protect it in all future times if the slave
6 escapes from the owner."

7 Contrast that, if you will, with the opinion of
8 the same Supreme Court of the United States, 80 years later
9 in the case of National Labor Relations Board versus Jones
10 & Laughlin in which the Supreme Court held constitutional the
11 National Labor Relations Act and in which Chief Justice
12 Charles Evans Hughes said that a single employee was helpless
13 in dealing with an employer, that he was dependent ordinarily
14 on the daily wage for the maintenance of himself and his
15 family, that if the employer refused to pay him the wages
16 that he thought fair, he was nevertheless unable to leave
17 the employer and resist arbitrary and unfair treatment
18 and by that pronouncement the Supreme Court of the United
19 States held that the Federal Government was within Consti-
20 tutional prerogatives to enact a law regulating the
21 relationship between employers and employees and giving

1 employees the rights which otherwise would have been denied
2 to them to bargain, to organize one with the other, and
3 to bargain collectively.

4 In the course of the succeeding years since Jones
5 & Laughlin, and I might say that the New York Constitution,
6 the 1938 Constitution prior to the National Labor Relations
7 Act contained a right to organize and bargain since the
8 time of the National Labor Relations Act and the recognition
9 that the State should and must afford this fundamental
10 right to working people, a number of states have recognized
11 it and have both constitutionally and by statute effectuated
12 the right.

13 We in Maryland have done very little, as a practical
14 matter, nothing to guarantee the rights of our working
15 citizens to organize and bargain collectively.

16 Historically, I think it is interesting to note,
17 because I am sure that many members of the committee will
18 want to know how this recommendation fits into the context
19 of the Declaration of Rights which we have been discussing
20 the last several days, I would call to your attention that
21 the previous edition of the Model State Constitution published

1 in 1945 and re-issued through to 1959, contains a right
2 to organize. I won't read it all to you, but it is very
3 similar to the proposal which we make to you today.

4 The present model State Constitution contains
5 no such provision; however, I would like to read to you the
6 reasons the authors give for not recommending the inclusion
7 of the right to organize and bargain collectively in the cur-
8 rent Constitution, because I think it will be of great
9 interest to the people of this committee who are having
10 one hundred years to catch up with in preparing this new
11 Constitution.

12 The National Municipal League says that certain
13 other rights, after having discussed a number of other things
14 they feel belong in or out of a Constitution, say,
15 "Certain other rights, such as, for instance, the right
16 to bargain collectively, or the provision that labor is
17 not a commodity were not included because under present
18 Constitutions they appeared to need no separate Constitutional
19 reflection."

20 It is recognized, however, that in some juris-
21 dictions there may be need for inclusion of such provisions

1 and their omission here is not intended as an expression
2 of opposition to their inclusion on substantive policy
3 grounds.

4 We still do need a right to organize and
5 bargain collectively in the basic law of the State. We need
6 it because nearly half a million of our working citizens
7 do not today have any protection whatever in this regard.

8 The National Labor Relations Act to which I
9 earlier referred covers only those people in interstate
10 commerce and only those people in interstate commerce who are
11 employed by employers of some size and substance.

12 In addition the Act excludes people working for
13 charitable institutions, particularly hospitals and it does
14 not include any or practically no employees in the service
15 trades such as waiters, waitresses and parking lot attendants.
16 This group adds up to five, or nearly five hundred thousand
17 people in this State and it is not coincidental, I submit,
18 that this identical group are the ones who according to
19 federal statistics are earning less than the minimum wage.

20 Now, the statement of a right to organize and
21 bargain collectively which we ask be included in the new

1 Constitution would, of course, have symbolic universal
2 application to all people in the State, but it is to, first
3 of all, a group of private employees who are not covered
4 by the National Relations Act and who have no protection by
5 any other law in the state and secondly, to the public employ-
6 ees of the State to whom we feel this right must be
7 addressed.

8 The existence of a large group of citizens who
9 must live in a labor market in which only the employer
10 has a say is detrimental to the entire economy of the State,
11 to say nothing of the human dignity of the individual
12 involved.

13 The blight which is caused by the quasi-involuntary
14 servitude in which many people working in the fringe
15 industries are placed without any means of collective action
16 is one which this Constitution must address itself to.

17 I will talk momentarily about the public employees.

18 It is certainly our intention to include all employees,
19 whether they be in the hire of the state or private persons
20 and industries within the perview of the recommendation.

21 The Personal Rights Committee at a later point

1 in part 2 of its report has suggested to the Convention that
2 the principle of sovereign immunity ought to be abrogated
3 by the Constitution, that the State should no longer be able
4 to escape responsibility for its omissions and commissions
5 as, for instance, when an automobile owned by the State injures
6 someone, it should be in the same position as when a private
7 person is involved in an accident.

8 This same principle, but with much more force,
9 I suggest, applies also to the State in the role of an
10 employer.

11 The 135,000 employees of the State in its political
12 subdivisions have no right to organize or to bargain collec-
13 tively.

14 It is true that in many areas of public employment
15 and to an increasing extent, there have been organizations
16 recognized by the State as political subdivisions and
17 bargaining occurs. We say that this ought to be a right.
18 It ought to be a must that the Government as an employer,
19 should certainly afford its citizens or its employees all
20 of the avenues of redress that those in private industry
21 enjoy.

1 The proposal for the recommendation of the minority
2 and, Mr. Chairman, if Amendment -- if the pages would
3 like to distribute Amendment 21, you can have the --

4 THE CHAIRMAN: The pages will please distribute
5 Amendment L.

6 DELEGATE BOTHE: The language suggests
7 the absolute bare bones minimum statement of right. It is
8 language similar to that contained in the Constitutions
9 of Hawaii, Missouri, New Jersey, and New York. In the
10 case of New York, both the current and the proposed Consti-
11 tution.

12 It would assure the fundamentals of employee
13 rights. It is no labor bill of rights. It is simply a bare
14 bones statement of the very fundamental relationship that
15 should be guaranteed by the Constitution to the working
16 people of the State that they be entitled to organize
17 and to bargain collectively.

18 It does not require that any agreement be reached.
19 It merely keeps the channels of communication open between
20 employer and employees and assures a degree of democratic
21 give and take in the industry of this state, something

1 which is sadly lacking.

2 I am sure that there may be some question brought
3 here about the right to strike and I would like to emphasize
4 that this proposal does not deal with that question, but,
5 on the contrary, sets out an assurance that there will be
6 fewer disruptions of labor.

7 I have been making an informal survey of such
8 strikes as have occurred in the public employment in
9 recent years and it seems that the only ones that have taken
10 place have been in an effort to seek recognition, not to
11 seek any particular terms of employment, but merely to obtain
12 the avenue through which a contract can be reached.

13 By the adoption of this language we, the minority, suggest
14 that there will be a modicum of peace on the industrial
15 scene of the State and that it has a practical operative
16 effect that will be beneficial, not only to those personally
17 affected, but to the whole body politic of the State of
18 Maryland.

19 I would like to close my formal remarks, I am
20 not going to quote Jefferson or Hamilton, but one of our
21 fellow Delegates who was kind enough to lend me

1 some matters from his master's thesis, Delegate Boileau.

2 In speaking of the need for the guarantee that we here asked
3 he wrote, "Since in social conditions the most effective
4 action is collective action, the most important liberty is
5 the liberty to cooperate with others, that is, to participate
6 in collective action, the most important deprivations of liber-
7 ty are therefore those that limit or prevent altogether
8 cooperation with others."

9 I urge the members of this committee to guarantee
10 the right of the working people to cooperate with one another
11 and to open up the avenue in which industrial democracy
12 can exist for all people in this State.

13 THE CHAIRMAN: Before having questions to the
14 minority spokesman, the Chair recognizes Delegate Cardin
15 on a matter of personal privilege.

16 DELEGATE CARDIN: Mr. Chairman and fellow
17 delegates, it gives me great pride and pleasure to call your
18 attention to a group of 24 students from McDonogh School,
19 Baltimore County, Maryland, accompanied by their teacher,
20 Mr. Graham, and if I may add a personal touch, to greet
21 my son, Stephen, who is in the group. I hope they benefit

1 from our deliberations and that we give them a most
2 cordial welcome.

3 Thank you. (Applause)

4 DELEGATE KIEFER: I would like to rise to a
5 point of personal privilege and to follow out what Delegate
6 Cardin said.

7 Among that group is the son of one of my law
8 partners, Scott Taber, a very fine young man. I would
9 like to have him welcomed. (Applause)

10 THE CHAIRMAN: Delegate Price.

11 DELEGATE PRICE: I would like to welcome the
12 group from Holabird Junior High School. We have 120 students
13 and their teachers, Mrs. Yung, Mrs. Swengosh, Mr. Kowath,
14 Mr. Lane, Mr. Mayr and Mr. Schwablin.

15 May we welcome them this morning, too.

16 Thank you, sir. (Applause)

17 THE CHAIRMAN: For what purpose does Delegate
18 Macdonald rise?

19 DELEGATE MACDONALD: Questions.

20 THE CHAIRMAN: Are there any other statements of
21 personal privilege or announcements?

1 THE Chair recognizes Delegate Macdonald.

2 DELEGATE MACDONALD: Delegate Bothe, if this
3 amendment were adopted, I am referring to Amendment L, would
4 the General Assembly be permitted to enact a statute
5 guaranteeing the right to work, in other words, providing
6 that a man would not be required to join a labor organization
7 in order to work?

8 DELEGATE BOTHE: I would hope they would not,
9 but there would certainly be nothing in this provision
10 precluding it.

11 DELEGATE MACDONALD: I take it that you would
12 not accept an amendment to that effect?

13 DELEGATE BOTHE: I think it is an entirely dif-
14 ferent question and one which, if at all, should be dealt
15 with statutorily.

16 THE CHAIRMAN: Delegate Sickles.

17 DELEGATE SICKLES: Delegate Bothe, I am aware that
18 as you indicated this is a bare bones proposition and I
19 just want to make sure that we are not precluding the
20 Legislature from enabling or passing legislation that
21 might deal with the subjects which might, in effect, modify,

1 qualify or condition the rights that you set out
2 here because, if not, it would seem to me you would have a
3 problem if you tried to develop a sophisticated comprehen-
4 sive, I guess you would call it a little Wagner Act in
5 terms of delineating, in detail, any further duties that
6 the legislature might want to include.

7 Do you intend that this right cannot be modified
8 and conditioned?

9 DELEGATE BOTHE: Quite to the contrary. One of
10 the by-products of the adoption of this provision, I
11 think, would be to encourage the General Assembly to imple-
12 ment it with appropriate legislation. I might point out
13 that this has been the case in Missouri where they started
14 out with a Constitutional provision similar to that
15 suggested here and have gone on since to enact a little
16 Wagner Act or a little Labor Relations Act for employees
17 within the State.

18 THE CHAIRMAN: Are there any other questions?

19 Delegate Wagandt.

20 DELEGATE WAGANDT: Delegate Bothe, this would
21 permit police departments to organize?

1 DELEGATE BOTHE: It would permit police depart-
2 ments to organize.

3 It would necessarily, it would not permit them to
4 go beyond the point of organizing and bargaining collectively
5 in the event that there were no successful negotiations,
6 it would not go to any right to disrupt the activities
7 of the policemen and I think that is my answer, yes.

8 THE CHAIRMAN: Delegate Wagandt.

9 DELEGATE WAGANDT: In other words, the General
10 Assembly could pass a law which would prohibit striking of
11 policemen?

12 DELEGATE BOTHE: Oh, yes, if otherwise consti-
13 tutional. I am not an authority on the constitutionality
14 of labor injunctions, although I realize and I think we
15 all know that there are situations in which the security and
16 welfare of the State would be imperiled by disruption of
17 work in which injunction is a proper remedy and one which
18 this right would not preclude.

19 THE CHAIRMAN: Delegate Wagandt.

20 DELEGATE WAGANDT: Do you know what the attitude
21 of the Police Commissioner of Baltimore City is on the issue

1 of organizing policemen.

2 DELEGATE BOTHE: The present Commissioner?

3 DELEGATE WAGANDT: Yes.

4 DELEGATE BOTHE: His predecessor, I was familiar
5 with, but he has gone back to the militia. I don't know
6 his attitude. I don't know his attitude. I know what
7 it ought to be.

8 THE CHAIRMAN: Delegate Hostetter.

9 DELEGATE HOSTETTER: The amendment I have before
10 me states employees have the right to organize and bargain
11 collectively through representatives of their own
12 choosing.

13 Now, admittedly this is a bare bones amendment.
14 Would it be possible for employees to organize and bargain
15 without first joining a labor union?

16 DELEGATE BOTHE: It would be -- without first
17 joining -- of course it would. Two or three employees
18 could just get together for lunch and decide they want to
19 organize without any labor union, as we understand it, being
20 in the picture.

21 DELEGATE HOSTETTER: Am I to understand that the

1 labor unions have nothing to do with this proposal?

2 DELEGATE BOTHE: The labor unions certainly have
3 a deep interest in it. I might add, however, Delegate
4 Hostetter, that organized labor has an unselfish interest
5 in this matter because its basis is that those employees
6 who are covered by the National Labor Relations Act, the
7 ones who would get some practical effect out of this proposal
8 are not people with whom big labor has any interest.
9 They already have the protection under federal law which
10 would be extended here to others.

11 DELEGATE HOSTETTER: On page 2 of the minority
12 report you equate collective rights with freedom of speech
13 and freedom of assembly.

14 Now, you have stated, I believe, that
15 collective rights are fundamental as would be freedom of
16 speech.

17 May I ask you this question with respect to the
18 organization? Would not an individual who had the freedom
19 of speech also have the counter right of not to speak?

20 DELEGATE BOTHE: I don't understand your question.
21 Does he have the right to keep his mouth shut? I don't

1 know if you would call that a right. The right is to
2 do something affirmative. He would have to keep his mouth
3 shut unless he had the right to open it.

4 THE CHAIRMAN: Delegate Hostetter.

5 DELEGATE HOSTETTER: Article VI of the Federal
6 Contitution entitles a person to testify in his own
7 behalf but Article V of the present Constitution permits
8 him to remain silent.

9 Getting back to the amendment with respect to
10 the joining, would not a counter right be involved in
11 organizing and bargaining, not to organize and bargain as
12 a member or as a non-member?

13 DELEGATE BOTHE: You call it a right; I don't.
14 I think that situation is implicit. We are not here
15 trying to deal with the question of whether somebody does or
16 does not have to join a labor organization. We are merely
17 giving him the vehicle through which he can organize and
18 through which he can expect a reception when he can get
19 his fellow employees to cooperate with him. As to what
20 happens in the event that the employer recognizes him and
21 his co-workers and those co-workers desire everyone to

1 share the burdens of collective bargaining we are not
2 reaching that point in this proposal at all.

3 THE CHAIRMAN: Delegate Hostetter.

4 DELEGATE HOSTETTER: Several questions have already
5 been asked with respect to this provision and all of them
6 hve been answered in this manner, that they could be
7 handled legislatively. Could not this particular proposal
8 be handled in the same manner, by the legislature?

9 DELEGATE BOTHE: Oh, yes, there is no question but
10 that the legislature with its plenary powers could both
11 grant this right and implement it as I hope it will by
12 statute.

13 The question, however, is that such things have
14 not happened. We have not had a new constitution in
15 one hundred years. In the interim, a great many states
16 who have rewritten their constitutions to meet new
17 and emerging needs and situations have felt it advisable to
18 accord this right through the Consitution. And there
19 is no right which we have adopted in this committee which
20 could not, as well, be assured by statute.

21 However, there are certain ones which we feel

1 are of such significance that they ought to be expressed
2 in the Contitution and the minority contend that this is one
3 of them.

4 THE CHAIRMAN: Delegate Hostetter?

5 DELEGATE HOSTETTER: Has not this particular amend-
6 ment and proposal already been set forth as the policy of
7 the State through court rulings?

8 DELEGATE BOTHE: The policy of the State set forth
9 as you mention I think only occurs as you mention only in one
10 place, in Article C of the Code which is an anti-labor
11 injunction statute passed in 1939.

12 There is a statement of state policy but,
13 of course, it has no effectuation and it is only a right
14 in terms of the Court's being precluded from enjoining
15 labor activity.

16 I would not say that the broad scope has been
17 accepted in any laws or court decisions.

18 THE CHAIRMAN: Delegate Hostetter.

19 DELEGATE HOSTETTER: Has there been any denial
20 in the state to organize by law? In other words, has
21 a specific law ever been passed in the state denying

1 the right to organize and bargain collectively?

2 DELEGATE BOTHE: Of course not.

3 I might say, I thought you were going to ask
4 me a slightly different question, which I would like to
5 answer. (Laughter)

6 As for the right being denied by absence of
7 law, it occurs all the time. The most recent situation,
8 I have a clipping here that I took out of the paper a few
9 days ago involving the employees at the Church-Home Hospital
10 in Baltimore who struck because they could get no recog-
11 nition from the management of that institution, could not even
12 get to talk, so they went out on strike and had to come
13 crawling back because there was no redress.

14 I might say that it is my understanding that
15 their strike had nothing to do with a desire to -- it was not
16 over wages but over grievance procedure.

17 THE CHAIRMAN: Delegate Weidemeyer.

18 DELEGATE WEIDEMEYER: Delegate Bothe, isn't
19 it true that the word "employees in line 8 of your amendment
20 is all-inclusive so if it were placed in the Constitution,
21 it would prohibit the legislature from making any

1 regulatory statutes regarding state employees, municipal
2 employees, employees of institutions of the State,
3 et cetera.

4 DELEGATE BOTHE: You mean that the State would
5 not be able to pass any laws or make any regulations or
6 statutes? I am sure you are a better lawyer than
7 to be asking that seriously.

8 THE CHAIRMAN: Delegate Weidemeyer.

9 DELEGATE WEIDEMEYER: My question was, is it
10 not true that the word "employees" in line 8 is so all-
11 inclusive without qualification that if placed in the Consti-
12 tution it would prohibit the State Legislature from making
13 any regulatory legislation regarding municipal and state
14 employees and employees of State institutions or quasi-
15 state institutions.

16 DELEGATE BOTHE: I cannot see where that would
17 follow at all. Of course, the State subdivisions would
18 continue to pass laws and make regulations and control
19 the terms and conditions.

20 As a matter of fact, all this proposal would
21 do would say that where the employees of the State wanted

1 in some respects to participate or discuss these terms,
2 they would have an avenue to do it in, but as for the
3 ultimate determination of the amount of wages, the conditions
4 of work and the various other regulatory matters affecting
5 the State and its employees, this would continue as it
6 always has.

7 THE CHAIRMAN: Delegate Bothe, I think Delegate
8 Weidemeyer's question is directed to you in the sense of
9 asking whether the State as an employer or a political
10 subdivision or municipality as an employer and not
11 as a maker of laws would have any right to prescribe
12 regulations with respect to its employees. Is that your
13 question, Delegate Weidemeyer?

14 DELEGATE WEIDEMEYER: It was and I had this
15 in mind.

16 And I had this in mind, that the word "employees"
17 was so all-inclusive without any further qualification or
18 specification that it would include employees of the
19 state and therefore the Legislature at some turn of events
20 might choose to say that we do not want to have our employees
21 organized or bargain collectively with it.

1 This wording in here to my way of thinking would
2 prohibit that and I asked Delegate Bothe if she did not
3 agree.

4 DELEGATE BOTHE: Oh, if you are saying that this
5 would prohibit the General Assembly or any employer from
6 saying that he will not allow his employees to organize and
7 that he will not bargain collectively with him, of course
8 it would.

9 THE HHAIRMAN: Any other questions?

10 Delegate Dukes.

11 DELEGATE DUKES: Delegate Bothe, my question goes,
12 I guess, right to your last answer.

13 Do I understand that this would create some
14 sort of implied constitutional obligation on the
15 employer to listen?

16 THE CHAIRMAN: Delegate Bothe.

17 DELEGATE BOTHE: I would say so.

18 I do not know how far your question is meant
19 to extend.

20 DELEGATE DUKES: Let me take a specific illus-
21 tration you gave a few moments ago.

1 You mentioned employees who actually organized
2 and went on strike and ultimately had to come crawling
3 back ultimately because the employer would not listen.
4 How would this change that situation?

5 DELEGATE BOTHE: I think the employer would have
6 to listen, which is perhaps the short word for collective
7 bargaining.

8 THE CHAIRMAN: Delegate Dukes.

9 DELEGATE DUKES: Well, then, I would appreciate
10 it if you would simplify it; does that mean they could
11 invite them in and sit five minutes and listen?

12 What does this do to the employer?

13 DELEGATE BOTHE: Perhaps I should read
14 the definition of employer in the National Labor Relations
15 Act so it is clear to everybody when we propose that the
16 employer should bargain collectively.

17 I am quoting from Section 8(d) of the National
18 Labor Relations Act which requires employers in interstate
19 commerce to do just this, which is to bargain collectively
20 is a performance of the mutual obligation of the employer
21 and the representative of the employees to meet at
reasonable times and confer in good faith with respect

1 to wages, hours and other terms of condition of employment
2 or in the negotiation of agreement or any question arising
3 thereunder, but such obligations do not compel either
4 party to agree to a proposal or require the making of
5 a concession.

6 DELEGATE DUKES: That goes directly to the heart
7 of my problem. Obviously around the National Labor
8 Relations Act, there is a whole body of decisions and of course
9 the statute which places a number of rights and obligations
10 both on the employer and employee. Do I understand by this
11 amendment we would create in Maryland a body of law in
12 effect which incorporated all these various definitions
13 and so forth, including all the terms used in this particular
14 amendment?

15 DELEGATE BOTHE: No, Delegate Dukes. The question
16 of exactly what would occur if only, and without implementing
17 legislation, this provision were placed in the Declaration
18 of Rights is not an easy one to answer.

19 I have found one court case construing the meaning
20 of this bare bones provision, a case coming out of
21 Missouri where, as I said previously, originally the

1 Constitution merely gave the right which has since been
2 implemented by legislation, and I think the record ought
3 to indicate what that court in a case decided in 1957
4 found in a particular fact circumstances were the
5 obligations arising out of a right to organize and bargain
6 collectively.

7 In that case, which is called Quinn vs.
8 Buchanan 298 Southwest Second, the employees under a
9 provision very similar to that which we have heard pro-
10 posed, in fact I think it is the exact same word, petitioned
11 the court for preventive and mandatory injunctive relief
12 against an employer who apparently discharged a number of
13 them for their organizing activities and refused to either
14 recognize the union or to sit down and engage in collective
15 bargaining.

16 The court held that the plaintiffs, that is the
17 working men, were entitled to preventive relief in
18 enjoining the employer from taking any action against them;
19 however, that they were not entitled to mandatory relief
20 requiring the employer to sit down and bargain. The relief
21 to which they are entitled is to have the rights of those
employees who voluntarily choose to organize with them for

the purpose of collective bargaining protected from coercion.

1 The Court then went on to say that the
2 Constitutional provision was not a little Labor Relations
3 Act, that it was, instead, a declaration of a fundamental
4 right of individuals. They said it was self-executing
5 to the extent that all provisions of the bill of rights were
6 self-executing. That is that any governmental action
7 in violation of the right was void and that as between
8 individuals -- because the Constitution declared a right,
9 the violation of which is a legal wrong, there is every
10 available appropriate remedy to redress or prevent its
11 violation; however, that the Constitutional provisions
12 required no affirmative duties concerning the right and
13 that the only remedies could be applied to their violation.
14 Does that explain to you what the legal consequences
15 unadorned might be?

16 DELEGATE DUKES: I think perhaps the word
17 you are groping for is yes or no. Would it be the
18 position of the minority that this specific language
19 adopted in the proposed Constitution should or should not
20 permit mandatory relief to compel an employer to give
21 his best efforts for compulsory bargaining?

1 THE CHAIRMAN: Delegate Bothe.

2 DELEGATE BOTHE: I cannot answer it in one
3 word, Delegate Dukes.

4 On the basis of the case I just cited to you,
5 I do not think it is likely that the outcome would be any
6 different, that it would be possible to go to court and con-
7 strue this matter as an affirmative ground for relief?
8 However, I would not want the history of this debate to
9 tie the appropriate court, if the time should come, I
10 think the court would have to consider it on its own
11 merits perhaps using this Missouri Case as a guide.

12 THE CHAIRMAN: Delegate Maurer.

13 DELEGATE MAURER: Delegate Bothe, I have some
14 questions on recognition. You say that employees have a
15 right to organize and to bargain collectively. I am
16 a member of a local school system where we have three
17 teachers' organizations. They would all like to bargain
18 collectively, but the problem is, in practice, you can
19 truly only negotiate with one group.

20 Now, if this were in the Constitution and if there
21 were no -- if legislation on the matter did not exist

1 as it does exist now, wouldn't the three organizations
2 have a right to claim that we should negotiate with all
3 three?

4 DELEGATE BOTHE: The answer I would give you is
5 no, because the statement is, "through representatives
6 of their own choosing," employees' choosing, a majority
7 of the employees. In Baltimore City, as I am sure you are
8 aware, Delegate Maurer, we had at least two organizations
9 of teachers. There was a strike which occurred because one
10 organization felt that it was the representative of the
11 majority and should have recognition, which strike was
12 settled on the basis that an election would be called and
13 that the school authorities would sit down with the union
14 proving itself, as one did, to represent a majority.

15 Certainly, this provision does not mean
16 that at any time two or more employees get together and
17 want to represent themselves, that it would be the
18 obligation of the employer, be it public or private, to
19 go through full-scale bargaining negotiations.

20 DELEGATE MAURER: You say "through representatives
21 of their own choosing," means not their choosing their

1 negotiating team, but there must be an election, but
2 could this be some other means in the implementing
3 legislation such as choosing by the enrollment in the organiza-
4 tions as of a certain time?

5 As you know, this was a matter of great difficulty
6 and perhaps why an employee-negotiating bill failed in the
7 legislature last year for teachers.

8 Are you in the Constitution setting up the
9 conditions under which employment negotiations, collective
10 negotiations in the public sector can be set up?

11 DELEGATE MAURER: Not at all. This is certainly
12 no subject for the Constitution. The Constitution should
13 state the principle. It would be hoped, I think, and very
14 desirable, that the legislature set up machinery by which
15 this provision could be implemented.

16 Certainly, it does not belong in the
17 Constitution.

18 THE CHAIRMAN: Delegate Maurer?

19 DELEGATE MAURER: I have a question on bargaining
20 collectively.

21 As you know, in the New York State law on

1 negotiations or employee-employer relationships in the
2 public sector, they used the words "collective negotiations."

3 One of the problems is whether you can make
4 contracts. Collective bargaining implies reaching an
5 agreement through contract. Public school systems, for
6 example, which are large employers but are not independent
7 and they cannot assure certain funds and as the law has
8 been held, we are not in a position to sign a contract.
9 Do you have any implications in this statement of the
10 use of the word "collective bargaining" that contracts
11 are involved?

12 DELEGATE BOTHE: The implications are, as I
13 believe they are defined in the National Labor Relations
14 Act. You are looking toward an agreement. When you are
15 speaking of a contract, I do not know whether you are
16 distinguishing a written contract from an agreement and
17 this proposal does not purport to make any such distinction.
18 It is merely a question of the employer and the employee
19 sitting down and talking it over in the hope that they
20 can reach an agreement satisfactory to both.

21 Whether that agreement involves a written

1 contract, whether the employer's binding the conditions
2 of wages and working can enter into such a contract is not
3 implicit here.

4 THE CHAIRMAN: Delegate Maurer.

5 DELEGATE MAURER: I have a question.

6 We have talked about implementation by law and
7 I am assuming you have talked about the General Assembly.
8 What effect would this have on executive orders and,
9 secondly, what effect would this have in terms of local
10 implementation?

11 Could jurisdictions, either local government,
12 school boards, et cetera, set up their own regulations or
13 are you thinking only in terms of state-wide legislation?

14 DELEGATE BOTHE: Oh, no, in fact, there is no state-
15 wide legislation now and what may occur in the future would
16 be up to the General Assembly but I think it is contemplated
17 in the cases of school boards and other areas which are
18 locally managed and run, that the right be vis-a-vis
19 the local authorities and if the State should enact
20 legislation I am certain that it would leave the negotiating
21 machinery in the hands of those who are responsible for the

1 employment and conditions of employment.

2 THE CHAIRMAN: Delegate Maurer.

3 DELEGATE MAURER: If I may pursue the executive
4 order, as you know, under the Kennedy Administration there
5 was a famous Executive Order about the Federal employees.

6 Do you view this avenue open to arrangements
7 for state employees, that is, executive order rather than
8 legislative implementation?

9 DELEGATE BOTHE: I would hope that both the
10 Executive and the General Assembly would by the inclusion
11 of this language be inspired to do what they have not
12 previously seen fit to do and use their powers and
13 authorities to make certain that this right is effectuated
14 and is taking place in all the areas of the State.

15 I do not know in which instances it would be
16 more appropriate to be done by Executive Order or by the
17 General Assembly but I think the efforts would be
18 cooperative just as the President's order complements
19 the National Labor Relations Act.

20 THE CHAIRMAN: Delegate Beatrice Miller.

21 DELEGATE B. MILLER: Deledgate Bothe, isn't

1 it true that the State School Board in a by-law last
2 year adopted a professional negotiations resolution
3 which recognized the right of their employees to bargain
4 collectively?

5 DELEGATE BOTHE: If you ask the question I think
6 I can safely say yes.

7 THE CHAIRMAN: Delegate Miller.

8 DELEGATE B. MILLER: I would also like to ask
9 you to -- you mentioned something about a model
10 Constitution proposing a provision.

11 Can you tell us a little more about what the
12 model Constitution proposed?

13 THE CHAIRMAN: Delegate Bothe.

14 DELEGATE BOTHE: I can give you the language which
15 copies -- I will read it, it is Section 103 of the Fifth
16 Edition of the Model Constitution. It is placed between
17 due process and searches and seizures and, incidentally,
18 is the only provision which is not identical to those
19 which we adopted yesterday and it reads:

20 "Citizens shall have the right to organize,
21 except in military or semi-military organizations not under

1 the supervision of the State and except for purposes
2 of resisting the fully constituted authority of this State
3 or of the United States. Public employees shall have
4 the right, through representatives of their own choosing
5 to present to and make known to the State, or any of its
6 political subdivisions or agencies, their grievances and
7 proposals. Persons in private employment shall have the
8 right to bargain collectively through representatives of their
9 own choosing."

10 I might say that public and private employees
11 are separated both in the model I just read to you in
12 the New Jersey Constitution and the Hawaii Constitution,
13 that some research into the reasons for doing this
14 have revealed that it would not be necessary to make separate
15 provisions in this Constitution as long as the intention is
16 clear to include both public and private employees
17 and for that reason we do not suggest separate provisions.

18 THE CHAIRMAN: Delegate Pullen.

19 DELEGATE PULLEN: Mr. Chairman, I would like to
20 rise for a point of personal privilege and ask the
21 Convention to join me in welcoming my neighbor and the

1 President of the Baltimore County Parent Teachers
2 Association, Mrs. Lee Wuerfel and Mr. R. R. Richards
3 of the Parent Teachers Association of Baltimore County. (Applause)

4 THE CHAIRMAN: Delegate Ulrich.

5 DELEGATE ULRICH: Mr. President, I rise for
6 a point of personal privilege. I want to welcome some
7 more students from the North Glen Elementary School
8 along with their teachers, Mrs. Perkins, Mrs. Pearson,
9 Mrs. Harris and Mr. Muntain.

10 I hope the Convention will welcome them at this
11 time. (Applause.)

12 THE CHAIRMAN: Delegate Maurer, do you have a fur-
13 ther question?

14 DELEGATE MAURER: Yes, is it not true that the
15 State, by law which was passed deals only with the
16 right of the members of a particular organization to consult
17 with the school board and still leaves open the question I
18 raised about the rights of other organizations to claim that
19 under this wording they still have a right to negotiate
20 with the board, too. I think we have an interim problem
21 here which the State, by law, does not address itself to.

1 THE CHAIRMAN: Delegate Bothe.

2 DELEGATE BOTHE: Delegate Maurer, are you refer-
3 ring to the Baltimore Teachers?

4 DELEGATE MAURER: The state law which Delegate
5 Miller mentioned which, as she phrased it, indicated that
6 this resolved the problem and I am saying it still leaves
7 open -- raises the question whether it does not still leave
8 open the very problem I raised with you initially about
9 recognition.

10 DELEGATE BOTHE: We are not writing a statute
11 here as has been said. We are simply stating a right.
12 The right has some justifiable aspects to it. What they
13 are or may be is about as impossible for me to summarize
14 as it has been in the last few days for other speakers
15 trying to talk about due process and equal protection and
16 such ever-expanding and happily nebulous phrases.

17 Here again we have the statement of a basic right
18 which has all kinds of implications and connotations.
19 I would suggest to you that particularly on the basis
20 of the Missouri decision which is the only one I have
21 been able to locate, construing the right without any

1 additional material, that in the event a state or
2 private employr is confronted with competing demands from
3 varying organizatins, for collective bargaining and
4 organization, that the subject would be within reasonable
5 construction of the courts if it could not be resolved
6 privately and I cannot picture any court saying that an
7 employer must bargain with every faction of employees in
8 his place. I think what happened in the teacher's strike
9 in Baltimore would be the proper procedure and that is that
10 the employer arranged to have an election in which the
11 choice of the majority of the teachers was made and then
12 proceeded to bargain with that segment.

13 THE CHAIRMAN: Delegate Pascal?

14 DELEGATE PASCAL: Dele~~g~~ate Bothe, on your
15 point regarding the collective bargaining, is it my
16 understanding that a portion of the employees could bargain
17 with the employer if they did not represent the majority?
18 Is that correct?

19 DELEGATE BOTHE: They can today, under federal
20 law, except that the obligation of the employer to deal
21 with them is limited in the case where they do not represent

1 a majority.

2 THE CHAIRMAN: Delegate Pascal.

3 DELEGATE PASCAL: One other point. Let us say
4 that 20 per cent of the employees would like to bargain.
5 Would they forego the election as to whether to be
6 represented by a particular union? Do hey bargain
7 without an election?

8 DELEGATE BOTHE: There is no magic to an
9 election. The National Labor Relations Act has machinery
10 in which the Federal Government will conduct elections
11 in the event that there is some question as to whether
12 a particular labor organization represents the majority
13 of employees, but there is nothing to preclude and
14 very frequently it happens, that without any formal
15 designation of the majority, the employer sits down with
16 a group of employees whom he is satisfied are representative
17 of the employees in his establishment.

18 THE CHAIRMAN: Delegate Neilson.

19 DELEGATE NEILSON: Delegate Bothe, before
20 in answer to the question you referred to the Model
21 Constitution and I am unable to find the reference.

1 Would you help me on this, please?

2 I think you read it.

3 DELEGATE BOTHE: I am reading from page 28,
4 the discussion from which I read starts on the preceding
5 page under what is called the style of the Bill of Rights.

6 DELEGATE NEILSON: Will you tell me what
7 edition you were reading from?

8 DELEGATE BOTHE: The current edition which was
9 distributed to all of us. It seemed to have been published
10 in 1963. That seems to be what you have.

11 THE CHAIRMAN: Any further questions?

12 Delegate Hutchinson.

13 DELEGATE HUTCHINSON: Delegate Bothe, isn't it
14 true that many of these employees that you mentioned
15 in your report that you say do not come under the National
16 Labor Relations Act, don't they in reality come under the
17 so-called Fair Labor Standards Act, some of them?

18 DELEGATE BOTHE: That is, of course -- yes, you
19 mean minimum wage, state minimum wage, in some instances
20 they come under that and some they don't. They have
21 various coverage, of course, I am not meaning to imply

1 that the state has completely forgotten them in
2 enacting beneficial legislation but this is something
3 given them from ^{on} high. This is not anything which they are
4 able to effectuate through the give and take of collective
5 bargaining and it is also a bare minimum, the eight-hour
6 day in the minimum wage is applicable to many of them, but
7 that is not much.

8 THE CHAIRMAN: Delegate Hutchinson:

9 DELEGATE HUTCHINSON: Don't the employees--
10 the employees that do not come under this Act, don't they
11 have the right today though to bargain collectively if
12 they so desire?

13 DELEGATE BOTHE: You mean don't they have the
14 right? If they want to get fired, they do.

15 DELEGATE HUTCHINSON: But they can bargain collec-
16 tively.

17 DELEGATE BOTHE: Delegate Hutchinson, I do not
18 know what you mean by that, because -- no, they cannot
19 bargain collectively. I think it is that simple.

20 If they make any effort toward it and it is
21 rebuffed, that is the end of it.

1 THE CHAIRMAN: Any other questions?

2 Delegate Child.

3 DELEGATE CHILD: Delegate Bothe, I am very ig-
4 norant on labor legislation. As I understand it, those
5 employees who are engaged in interstate commerce are
6 covered under the Wagner Act, which is the Federal Act,
7 am I correct in that statement?

8 DELEGATE BOTHE: For the most part, there are a
9 lot of sophisticated areas where you have to determine
10 if they are in interstate commerce but, on the whole, you
11 are correct.

12 THE CHAIRMAN: Delegate Child.

13 DELEGATE CHILD: The Wagner Act was an act
14 of Congress, a statute, correct?

15 DELEGATE BOTHE: That is correct.

16 DELEGATE CHILD: It did not require any
17 Constitutional provision to enact that federal statute,
18 did it?

19 DELEGATE BOTHE: If your point, Delegate Child,
20 is that we could do this without a statute, I will concede
21 that any moment just as I previously stated, we could

1 probably have all the guarantees and all the protections
2 of this Constitution without any provision being made
3 for them.

4 THE CHAIRMAN: Delegate Child.

5 DELEGATE CHILD: In other words, as I understand
6 it, you can get the same rights from the Maryland Legislature
7 that you now ask us to include in the bill of rights?

8 DELEGATE ROTHE: The Maryland Legislature would
9 not so much confer the rights as implement them. For those
10 of us to declare those rights which we are to live by
11 in this State--

12 THE CHAIRMAN: Delegate Child.

13 DELEGATE CHILD: My question, Delegate Bothe,
14 does the legislature have the power to enact legislation
15 which would accomplish the same provision which you
16 asked for to be included in the Bill of Rights now.

17 DELEGATE ROTHE: Of course it does.

18 DELEGATE CHILD: So that this matter could be
19 accomplished by the Legislature without inclusion in the
20 Bill of Rights. is that correct?

21 DELEGATE BOTHE: Judge Child, there is utterly

1 no question but that the legislature has power to grant
2 this right or any other right.

3 Of course, you have the other side of the coin
4 and that is whether the General Assembly should have
5 the authority to take it away and if it were in the
6 Constitution, the General Assembly would lose that right
7 and I would argue that this is so important that the
8 discretion of allowing the General Assembly to restrict
9 the right to organize and bargain collectively should be
10 taken out by this Constitution.

11 THE CHAIRMAN: Delegate Child.

12 DELEGATE CHILD: Now, you were a member of the
13 Constitutional Convention Commission, were you not?

14 DELEGATE BOTHE: I was.

15 DELEGATE CHILD: This provision which you now
16 ask to be included in the Bill of Rights was not included
17 in the draft, is that correct?

18 DELEGATE BOTHE: It was neither rejected nor
19 included in the draft. I did not serve on the committee
20 which dealt with the subject and I do not believe the Commis-
21 sion gave it very much consideration, one way or the other.

1 After my past three months down here at the Convention
2 I might say there have been many things that I have supported
3 or rejected which as a Commission member I approved and
4 I think this is true. I have noted for instance Dr. Bard,
5 who served with me on the Commission did not bring up
6 consumer protection at that time, either. And there are--
7 I did not come here prepared to rubber stamp the draft,
8 although I am very proud of it.

9 THE CHAIRMAN: Delegate Child.

10 DELEGATE CHILD: That is a rather long answer
11 to my question, Delegate Bothe. I asked you if it was
12 included in the draft.

13 DELEGATE BOTHE: It is not.

14 DELEGATE CHILD: In the Bill of Rights.

15 DELEGATE BOTHE: It is not.

16 DELEGATE CHILD: Was it considered?

17 DELEGATE BOTHE: I do not know.

18 It was not considered on the floor of the Commis-
19 sion at all. It probably was considered by the Commission's
20 Committee on Personal Rights but I did not serve on
21 that Committee.

1 THE CHAIRMAN: Delegate Child.

2 DELEGATE CHILD: Do you know whether or not it
3 was considered by the Committee on the Bill of Rights?

4 DELEGATE BOTHE: No, I do not.

5 THE CHAIRMAN: Delegate Child.

6 DELEGATE CHILD: Now, it is not included, at
7 least I cannot find it, in the Model State Constitution.
8 I have the 1963 edition. Is that the latest edition?

9 DELEGATE BOTHE: Delegate Child, I would suggest
10 perhaps you did not hear my earlier remarks, that on page
11 28 of the edition you have there, there is an explanation
12 as to why it was not included which says that its
13 omission was not intended as an expression of policy.

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1 DEELGATE CHILD: That is all.

2 DELEGATE WAGANDT: I find this provision generally
3 acceptable, but I find myself having a little bit of
4 trouble in a critical area such as that of policing.
5 Can you tell me what has occurred in other cities where
6 police forces have been organized and where there has
7 been a no-strike pledge, when the police were not able to
8 get their demands met through collective bargaining, has the
9 situation arisen where say the absentee system of the
10 police suddenly jumped to 60 or 80 per cent.

11 DELEGATE BOTHE: Delegate Wagandt, I am
12 unfortunately not an authority on the subject of which I
13 speak and I do not want to be caught in any inaccuracies.
14 What I can tell you is simply the result of having
15 discussed this topic with a number of interested parties
16 and there may be others in the room that can add to my
17 response, but it is my understanding that the organization
18 of police has not resulted in any loss of services
19 to the public but on the contrary, has enabled the police
20 to give better service to the community because of the
21 way in which it is carried out.

1 I know of no policemen strikes. Perhaps you
2 do, but I do not. I understand that all contracts reached
3 with police contain no strike clauses and this is true
4 also of all the essential fields.

5 There has been, as I think I stated earlier, no
6 instance where an organized public employees group struck--
7 the instances where strikes occur is where they are
8 striking in order to get what this Constitutional provision
9 would guarantee to them.

10 THE CHAIRMAN: Delegate Bennett.

11 DELEGATE BENNETT: Delegate Bothe, I would like
12 to go back over this question a little further where
13 you indicated that the General Assembly may pass any
14 sort of legislation concernring employees and their right
15 to organize, their wage standards, and so on.

16 Now, isn't it true throughout the whole history
17 of labor legislation that the courts have been very
18 conservative in their view of legislation without some
19 Constitutional provision?

20 For example, isn't it true that the workmen's
21 compensation acts have been struck down time after time

1 because of lack of some constitutional provision in
2 the state constitution? It occurred in Oregon, it
3 occurred in New York, it occurred in half a dozen other states,
4 did it not?
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1 DELEGATE BOTHE: Delegate Bennett, I don't know
2 if this is true because of a state constitution. I know
3 of innumerable situations in which welfare legislation,
4 if you want to call it that, was discovered to be
5 unconstitutional, and this goes back to the days between
6 Dred Scott and Jones and Laughlin.

7 THE CHAIRMAN: Delegate Bennett.

8 DELEGATE BENNETT: And the yellow dog concept.
9 What I am trying to say is I don't believe, or is it
10 true that the General Assembly does not have a blank check
11 to write legislation dealing with the rights of employees
12 to organize?

13 DELEGATE BOTHE: I understand the point you are
14 making and that is there could possibly be a barrier to
15 legislation being enacted without Constitutional authori-
16 zation.

17 One of the arguments in favor of placing this
18 provision in the Constitution would certainly be that
19 it would place beyond any possible doubt the authority
20 of the General Assembly to pass this kind of legislation.

21 THE CHAIRMAN: Delegate Bennett.

1 DELEGATE BENNETT: Thank you. That is the
2 point I wanted to bring out.

3 THE CHAIRMAN: Are there any other questions?
4 Delegate Neilson.

5 DELEGATE NEILSON: Delegate Bothe, you made a
6 statement before that the right to bargain collectively is
7 a right that the worker now has and that this particular
8 amendment does not necessarily have Constitutional
9 reflection.

10 I think that is the word used in the model
11 statement. It did not appear to need Constitutional re-
12 flection, but the statement you made was that perhaps the
13 legislature could take away the right to join or the
14 right to form for collective bargaining.

15 My question is this: In Section 10 of this
16 same article, isn't it an area which would fall within
17 reserve rights to prevent the legislature from taking
18 away something that we have as a natural right?

19 THE CHAIRMAN: Delegate Bothe.

20 DELEGATE BOTHE: I am a little bit confused by
21 the various questions you have posed. You want to know

1 whether the General Assembly could take this right
2 away?

3 THE CHAIRMAN: Delegate Nielson?

4 DELEGATE NIELSON: You made a statement as
5 I understood it, to say that the General Assembly could
6 enact legislation that may take away this particular
7 right to reform or organize.

8 THE CHAIRMAN: Delegate Bothe.

9 DELEGATE BOTHE: I believe I did so that.

10 THE CHAIRMAN: Delegate Nielson.

11 DELEGATE NIELSON: My question is this: Could
12 the legislature take away -- strike that.

13 Isn't there a reservation in Item 10, Section
14 10 of this same article that we are discussing that would
15 preserve this right?

16 THE CHAIRMAN: Delegate Nielson, if you will
17 permit the Chair to ask you, you mean your question to
18 be directed to the situation that exists if this amend-
19 ment were not made?

20 DELEGATE NIELSON: Yes, sir.

21 THE CHAIRMAN: Delegate Bothe.

1 DELEGATE BOTHE: There is a rather learned
2 article on reserve rights by Delegate Hardwicke attached
3 to the report of the Committee on Personal Rights and the
4 Preamble.

5 It is a very interesting article but I don't
6 feel that its position there does anything to specifical-
7 ly guarantee the right. It is merely a catch-all situa-
8 tion in case the courts decide they have a right, they
9 might rely on that provision to vindicate it.

10 I think the Supreme Court and the Federal Con-
11 stitution contains a similar provision, has only consult-
12 ed it twice in history, so nobody except Delegate Hard-
13 wicke, perhaps, knows what it means.

14 DELEGATE DARBY: Delegate Bothe, I think this
15 is more or less the same question that Delegate Nielson
16 just asked but if this amendment would pass it would mean
17 the legislature could not exempt any particular group; is
18 that correct?

19 THE CHAIRMAN: Delegate Bothe.

20 DELEGATE BOTHE: When you say exempt, --

21 THE CHAIRMAN: Delegate Darby.

1 DELEGATE DARBY: In other words, if you are
2 saying in your memorandum that there are 135,000 employees
3 of the state, I assume that you are including even the
4 assistant or deputy attorney generals, state's attorneys,
5 deputy or assistant state's attorneys, so I assume that
6 they would also be included and the legislature could not
7 exempt any group; is that correct?

8 THE CHAIRMAN: Delegate Bothe.

9 DELEGATE BOTHE: It depends on what you con-
10 sider to be employees. There is a body of law con-
11 struing the meaning of that. I don't think assistant
12 attorney generals or other policy-making employees of the
13 state or of private employers would be considered em-
14 ployees.

15 THE CHAIRMAN: Delegate Darby.

16 DELEGATE DARBY: You would consider, let's say,
17 an assistant attorney general an employee of the state.
18 He wouldn't be a policy-maker, would he?

19 THE CHAIRMAN: Delegate Bothe.

20 DELEGATE BOTHE: I think my answer would have
21 to be qualified in the same was as an earlier one was.

1 If the members of the attorney general's staff
2 decided they wanted to organize and bargain collectively
3 and their boss uses Constitutional powers to hire and
4 fire them, it would be a matter for the court to decide.
5 I don't see the situation arising.

6 THE CHAIRMAN: Delegate Darby.

7 DELEGATE DARBY: This wording is certainly all-
8 inclusive. It would include probably all employees of the
9 state and employees of anybody, is that correct?

10 THE CHAIRMAN: Delegate Bothe.

11 DELEGATE BOTHE: It would insofar as the con-
12 struction of the word employees included anybody. We
13 have other places in the Constitution. We talk about the
14 militia in terms of war and peace.

15 THE CHAIRMAN: Delegate Darby.

16 DELEGATE DARBY: This would possibly include
17 the militia. It could be a group of anywhere--

18 THE CHAIRMAN: I don't think you gave her an
19 opportunity to answer your other question. I don't know
20 whether you heard it, Delegate Bothe. He said this
21 would possibly include the militia; would it?

1 DELEGATE BOTHE: Apparently the Chairman likes
2 that question.

3 THE CHAIRMAN: I just want it answered.

4 DELEGATE BOTHE: I do not have a case at hand,
5 Mr. Chairman, but I do not think that the militia are
6 employees and I point to the model act proposal which
7 separates or talks about a right to organize, but talks
8 about the militia and goes on to talk about employees ,
9 so obviously the Constitutional draftsmen of the National
10 Municipal League don't think they can cover militia by
11 speaking of employees.

12 THE CHAIRMAN: Delegate Darby.

13 DELEGATE DARBY: Are you excluding militia,
14 then?

15 DELEGATE BOTHE: Of course. Militia aren't
16 employees.

17 DELEGATE DARBY: All right.

18 THE CHAIRMAN: Any other questions?

19 Delegate Vecera.

20 DELEGATE VECERA: Delegate Bothe, the word
21 "employees", it goes to the heart of some of the matter

1 that was discussed by Delegate Darby previously.

2 You mentioned there was a body of law concerning
3 the word "employees". Could you please just define that
4 a little more clearly for us and perhaps give us an
5 indication of what employees are?

6 THE CHAIRMAN: Delegate Bothe.

7 DELEGATE BOTHE: I am looking at the National
8 Labor Relations Act to find the definition of "employees".
9 I doubt very much it would cover it. If you ask me for
10 a particular situation and I am familiar with it, I could
11 probably give you a reasonably authoratative answer.

12 THE CHAIRMAN: Delegate Vecera.

13 DELEGATE VECERA: My question is, Delegate
14 Bothe, in other words, you are saying that the Federal law
15 is applicable here to this word "employees" and the state
16 law.

17 Could this be so the courts will so construe
18 that?

19 THE CHAIRMAN: Delegate Bothe.

20 DELEGATE BOTHE: I don't know, Delegate Vecera.
21 I think they would be free to construe it otherwise.

1 THE CHAIRMAN: Delegate Vecera.

2 DELEGATE VECERA: In other words, we want to see
3 the widest lattitude given to this word "employees" in
4 order it be effective and not go to Delegate Darby's pro-
5 posal, so there would be exemptions involved.

6 I would hope that word would have the widest
7 lattitude in order to cover people both in public and
8 private agencies, as well.

9 THE CHAIRMAN: Delegate Bothe.

10 DELEGATE BOTHE: I think that would have to
11 await the construction the courts would place on the word.

12 THE CHAIRMAN: Any further questions?

13 Delegate Wheatley.

14 DELEGATE WHEATLEY: Delegate Bothe, to be abund-
15 antly clear in this respect, is it not true that for
16 those areas now covered by Federal law in interstate
17 commerce, that any interpretations given by our court
18 in this respect would be pre-empted by the Federal act
19 as it now applies?

20 THE CHAIRMAN: Delegate Bothe.

21 DELEGATE BOTHE: They are now. Our state courts

1 do not have authority to deal with employer-employee
2 relationships which are covered by the National Labor
3 Relations Act, and this would not change that.

4 THE CHAIRMAN: Delegate Wheatley.

5 DELEGATE WHEATLEY: Thank you. That is all,
6 Mr. Chairman.

7 THE CHAIRMAN: Delegate Chabot.

8 DELEGATE CHABOT: Delegate Bothe, I understood
9 your replies to Delegates Child and Bennett to indicate
10 that most likely the legislature would have even in the
11 absence of this provision authority to effectuate the pro-
12 tections that you seek to provide by this provision.

13 Is this not true also of substantially all the
14 other matters that we have already approved in the Bill
15 of Rights?

16 THE CHAIRMAN: Delegate Bothe.

17 DELEGATE BOTHE: I think all of them. The
18 only places the legislature can't legislate is where it is
19 forbidden by the Constitution, and those areas where we
20 state affirmative right, we are doing no more than of
21 placing the stamp of fundamental directive on it, and the

1 legislature is free to act, and this is true, certainly
2 it was true of consumer protection and conservation, but
3 in this instance you are granting a justicial right. You
4 are not simply stating a policy in the hope that the
5 legislature will do something.

6 If the legislature acts or if it does not you
7 have accorded someone the ability to effectuate a right.

8 THE CHAIRMAN: Delegate Lloyd Taylor.

9 DELEGATE L. TAYLOR: Delegate Bothe, when
10 you first started to make your speech you said something
11 about the volunteer servitude.

12 I would like to ask this question. Many
13 times when people are trying to organize and in order
14 to obtain higher wages, sometimes they are intimidated, and
15 many times fired by their employers. Would this par-
16 ticular right, if it was instituted, I mean included in
17 the Constitution, would it protect many employees from
18 being intimidated and possibly fired because they
19 sought to engage in collective bargaining?

20 THE CHAIRMAN: Delegate Bothe.

21 DELEGATE BOTHE: Certainly it would, because

1 they would have a right to protect themselves against
2 this kind of coercion and intimidation.

3 THE CHAIRMAN: Delegate Taylor.

4 DELEGATE L. TAYLOR: Also with respect to many
5 employees who are not covered by the Wagner Labor Act;
6 how many employees in the state of Maryland are not
7 covered by the Wagner Labor Act?

8 THE CHAIRMAN: Delegate Bothe.

9 DELEGATE BOTHE: The statistics which I have,
10 and they are included in the minority report, I believe,
11 was that there are 100,000 agricultural workers -- this
12 is on page 3 of the report -- 250,000 retail and commer-
13 cial employees, another 170,000 in service industries.

14 These are all people that are not covered.

15 THE CHAIRMAN: Delegate Taylor.

16 DELEGATE L. TAYLOR: In your experience with
17 labor problems, for instance, you mentioned C church
18 Home Hospital employees, trying to select a unit repre-
19 sentative.

20 Do you find that many of these employees are
21 not covered by this federal law, who receive a wager
under the Federal Minimum wage?

1 THE CHAIRMAN: Delegate Bothe.

2 DELEGATE BOTHE: The figures which I obtained,
3 and they are from the Bureau of Labor Statistics, indicate
4 that the people who are in the uncovered industries are also
5 for the most part -- of course, I am not saying it is a
6 one-for-one matter -- the people who are receiving less
7 than the Federal minimum wage because they are not covered
8 under it either.

9 THE CHAIRMAN: Delegate Taylor, do you have
10 a further question?

11 DELEGATE L. TAYLOR: Just one other question:
12 Do you feel that, say, for instance, the public employees
13 employed by the State of Maryland, if the Convention
14 decided to include this right in the Constitution, do you
15 think the public employees employed by the state of
16 Maryland would receive better treatment and consideration
17 in terms of their employment conditions?

18 THE CHAIRMAN: Delegate Bothe.

19 DELEGATE BOTHE: I have not been a public
20 employee and I am not too much aware of the conditions.
21 I am sure they vary from place to place. Obviously public

1 employees are interested in organizing because they have
2 in increasing numbers in recent years joined labor organi-
3 zations. Certainly I think the psychological effect is
4 extremely important, because it gives them some ability to
5 participate in the determination of things most important
6 to them, their wages, working conditions, and other facets
7 of their employment.

8 THE CHAIRMAN: Delegate Taylor.

9 DELEGATE L. TAYLOR: Well, the reason why I
10 asked that question is because I have a letter from the
11 president of a local --

12 THE CHAIRMAN: Delegate Taylor, this is only
13 the time for questions, unless this is a preface to another
14 question. You will have an opportunity in debate to read
15 the letter you speak of.

16 DELEGATE L. TAYLOR: I don't plan to read the
17 letter. She expressed the opinion that such a right was
18 needed to be placed in the Constitution. She said that
19 many employees of state hospitals needed additional
20 protection with this particular right being placed in
21 the Constitution.

1 I wanted to ask you, are you familiar with a
2 situation in Baltimore City where the employees in the
3 school system were receiving less than one dollar an
4 hour, and of course they had agent negotiate for the
5 employees and he was successful in obtaining a fair
6 wage for the cafeteria employees?

7 Are you familiar with that?

8 THE CHAIRMAN: Delegate Bothe.

9 DELEGATE BOTHE: I am sure there are many in-
10 stances, Delegate Taylor, the particular ones I am not,
11 but I know of innumerable instances where people have
12 not been able to effectuate their right to organize and
13 bargain, which rights I am sure would have resulted in
14 vastly improved conditions for them.

15 THE CHAIRMAN: Any further questions, Delegate
16 Taylor.

17 DELEGATE L. TAYLOR: The point I was trying to
18 establish was the fact --

19 THE CHAIRMAN: This is not the time for debate,
20 Delegate Taylor. Do you have a further question?

21 DELEGATE L. TAYLOR: Well, Delegate Bothe,

1 according to your study of the problem, with your con-
2 tacts with labor people, have you gotten the impression
3 that many public employees and other employees of private
4 organizations are really demanding this right?

5 I am speaking-- In other words, I am speaking of
6 the people not protected. Is this the impression you
7 have received from your study of this situation?

8 DELEGATE BOTHE: I don't think there could be
9 any question or doubt. All you have to do is pick up
10 the evening paper several times a week and see another
11 account of how people are trying to effectuate these
12 rights against their employers, and I would certainly
13 suppose that it is of prime importance to them.

14 I feel so convinced myself or I wouldn't be
15 here.

16 THE CHAIRMAN: Any further questions?

17 Delegate Marvin Smith.

18 DELEGATE M. SMITH: Delegate Bothe, I am sure
19 down at law school you heard Professor Reno, on more than
20 one occasion, say we have got to get on. Do you think
21 maybe it is time to get on to debate?

1 DELEGATE BOTHE: I have no control over the
2 questions. I would be delighted to sit down.

3 THE CHAIRMAN: Delegate Groh.

4 DELEGATE GROH: Delegate Bothe, do you sub-
5 scribe to the basic premise--

6 THE CHAIRMAN: Delegate Bothe.

7 DELEGATE BOTHE: You are talking about property
8 rights?

9 THE CHAIRMAN: Delegate Groh.

10 DELEGATE GROH: Delegate Bothe, do you sub-
11 scribe to the basic premise that the function of the declar-
12 ation of rights is to set out those rights which the
13 individuals hold secure as against governmental inter-
14 ference, or transgression?

15 THE CHAIRMAN: Delegate Bothe.

16 DELEGATE BOTHE: No, I don't fully subscribe to
17 that precept. I think that the declaration of rights is
18 an instrument intended to protect the individual in his
19 relationships with other individuals which the state
20 ultimately must regulate.

21 I do not feel that the declaration of rights

1 must or can remain silent when the major activity, the
2 occupation of the people is somewhere else and when you
3 have employees who are larger than the state, whose
4 positions effect the daily lives of the citizens of the
5 state to a much greater or equal degree as the state
6 itself, I feel that the Constitution can deal with them,
7 and I point out to you, Delegate Groh, interestingly
8 enough, in the Constitutions, with the exception of
9 Hawaii, which is a separate section, in which the right
10 of employees to organize and bargain collectively is
11 stated, it is in the declaration of rights as the only
12 possible departure from this theory that you asked me
13 about.

14 THE CHAIRMAN: Delegate Groh.

15 DELEGATE GROH: Then I take it that you are not
16 in favor of including any other areas where we designate
17 rights of one individual against another individual?

18 THE CHAIRMAN: Delegate Bothe.

19 DELEGATE BOTHE: Could you give me an example?

20 THE CHAIRMAN: Delegate Groh.

21 DELEGATE GROH: For instance, Winhard versus
Tennant.

1 DELEGATE BOTHE: I don't think that belongs
2 in the declaration of rights. Our Constitution doesn't
3 deal with a number of them. For instance, under free
4 speech you deal with libel and give a citizen a right of
5 action against another for his use of free speech.

6 The Constitution can't be pure on this subject
7 matter. The state is what must effectuate the right. If
8 you have the right, it is the courts and the executive and
9 the various aspects of government that make it a reality.

10 THE CHAIRMAN: Delegate Hutchinson.

11 DELEGATE HUTCHINSON: Delegate Bothe, under
12 your provision, if your provisions happen to be
13 adopted by this Convention, what recourse would a small
14 employer have?

15 I am thinking of a particular example, say, if
16 a man owns a laundry and he has 20 employees and the
17 employees bargain collectively, and he cannot meet their
18 demands, and they refuse to work.

19 What recourse does he have? Can he fire them
20 and hire someone else?

21 THE CHAIRMAN: Delegate Bothe.

1 DELEGATE BOTHE: Of course he can.

2 THE CHAIRMAN: Delegate Hutchinson.

3 DELEGATE HUTCHINSON: Could they pursue their
4 case to the court and say that he refused to allow us to
5 bargain collectively?

6 THE CHAIRMAN: Delegate Bothe.

7 DELEGATE BOTHE: As an attorney representing
8 all kinds of people, I have had people come to me and
9 want to go to court. You can file suit on any ground.
10 As far as the guarantee is concerned, it certainly does
11 not require employers to hire people who don't do the jobs.
12 It only forbids employers from firing them because they
13 want to organize and bargain collectively.

14 THE CHAIRMAN: Any other questions?

15 Delegate Hostetter.

16 DELEGATE HOSTETTER: Just one further question.
17 The National Labor Relations Act, is it not a fact that
18 if notice is given to the employer by the employees that
19 they wish to negotiate, that no threats whatsoever can
20 be made to the employees after that particular time?

21 THE CHAIRMAN: Delegate Bothe.

1 DELEGATE BOTHE: I think you misconstrued the
2 Act. No threats can ever be made to employees for their
3 union activity before or after nor should any ever happen.

4 THE CHAIRMAN: Further questions?

5 Delegate Bothe, the Chair would like to ask just
6 a few questions for clarification.

7 Would I understand from your earlier answers
8 that as used here, employees is used in the ordinary
9 sense, and therefore would not include members of the
10 militia as a military organization?

11 DELEGATE BOTHE: That is correct.

12 THE CHAIRMAN: And did I understand you in
13 response to Delegate Wagandt's questions to be suggesting
14 that for somewhat the same reasons it might not include
15 members of police departments as members of the semi-mili-
16 tary organization, but that this would be for the courts
17 to decide?

18 DELEGATE BOTHE: I think that is a fair state-
19 ment, it would be for the courts to decide.

20 THE CHAIRMAN: With respect to your answer as to
21 the General Assembly having the power to implement, would

1 the General Assembly have the power to exclude any
2 particular classes of employees, as for instance, by
3 occupation, such as household workers or farmers or employers
4 of less than a certain number, one or two employees?

5 DELEGATE BOTHE: I think the legislature could
6 exclude any class it chose from the legislation. It
7 couldn't exclude them from the effect of the Constitution,
8 but it could pass legislation dealing with only parti-
9 cular kinds of employees that would not conflict with the
10 Constitution.

11 THE CHAIRMAN: That is what I wanted to clarify,
12 but you are saying the legislature could implement. It
13 could provide regulations with respect to collective bar-
14 gaining, but it could not deprive any particular class of
15 employees of the right to collective bargain?

16 DELEGATE BOTHE: That is right.

17 THE CHAIRMAN: One further question.

18 Would the power of the legislature under this
19 section extend to something like, for instance, provision
20 for compulsory arbitration between, in the case of very
21 large employers or anything of that sort?

1 DELEGATE BOTHE: This is not the opinion of
2 a labor lawyer. I think the General Assembly would be
3 able to enact compulsory arbitration laws without
4 conflicting with this provision, providing that the arbi-
5 tration were a part of the collective bargaining process
6 and not in conflict with it.

7 THE CHAIRMAN: Delegate Beatrice Miller.

8 DELEGATE B. MILLER: I rise, Mr. Chairman,
9 because in the clarification I am afraid we have done
10 great offense, I hope not, to the police employees, of
11 for instance Baltimore City, who now enjoy a relationship
12 in terms of their employment.

13 I think the clarification was in terms of pro-
14 hibiting, or having the General Assembly have the right
15 to exempt them from certain legislation but not to pro-
16 hibit them from the right to organize and bargain collec-
17 tively; is that correct?

18 THE CHAIRMAN: As I understood the minority
19 spokesman, she was saying that as to whether or not the
20 police departments of Baltimore City or anywhere else
21 would be included within this section, she would not

1 give a categorical answer and it would depend upon whe-
2 ther they were regarded as a semi-military organization
3 like the militia and hence exempt or not so regarded.

4 Is that a correct statement, Delegate Bothe?

5 DELEGATE BOTHE: That is a correct statement.
6 Delegate Miller has indicated, and I have some personal
7 knowledge of this, that the police have been accorded the
8 rights so that apparently in the judgment -- I don't know
9 that it has ever been construed by the courts -- but
10 apparently in the judgment of the state at this time
11 policemen should not be exempted on that ground.

12 I would assume that we are not reversing any
13 precedents by putting this provision in the Constitution.

14 THE CHAIRMAN: Delegate Miller.

15 DELEGATE B. MILLER: Mr. Chairman, I think we
16 need to make it rather clear that all employees, with
17 the possible exception of the military, would be included
18 in the right, but that certain classes of employees
19 could certainly be restricted by the General Assembly in
20 terms of, or exempted by the General Assembly, in terms
21 of whatever implementing legislation the General Assembly

1 wants to pass.

2 THE CHAIRMAN: I don't know whether that is a
3 question or a statement, Delegate Miller.

4 DELEGATE MILLER: A statement.

5 THE CHAIRMAN: Delegate Bothe.

6 DELEGATE BOTHE: I think it somewhat para-
7 phrases what I have already expressed. If there is any
8 conflict between the statement--

9 THE CHAIRMAN: Delegate Darby.

10 DELEGATE DARBY: I am confused. Are you saying
11 that if a group as such has the right to organize and
12 bargain collectively that the General Assembly can exempt
13 their, let's say their remedy from abuse by the employer
14 and as such take the attorney general, the assistant
15 attorney generals, the police, and say that this par-
16 ticular group, let's say one of these groups, cannot
17 strike as such or do not have as many remedies against
18 the employer as other groups might?

19 THE CHAIRMAN: Delegate Bothe.

20 DELEGATE BOTHE: Delegate Darby, I would stay
21 away from the example of the attorney general because that

1 goes to something else.

2 What the Chairman asked me was whether the
3 General Assembly would have to include all employees,
4 whatever they may be, as determined by the courts, in
5 asking legislation to implement this provision.

6 The answer is, and I will give you a concrete
7 example, they could pass a law setting up machinery for
8 organization of employees of retail stores. That would
9 not apply to any other people seeking to organize; say,
10 something like the labor acts, providing that you people
11 have an election, have a representative chosen, and so
12 forth.

13 On the other hand, it would say employees of
14 hospitals weren't covered. This is all right. The
15 General Assembly is going to have a great deal of latti-
16 tude in passing laws to carry out the principle that the
17 Constitution will contain.

18 The only thing the General Assembly will not be
19 able to do is to pass a law saying that any employee, and
20 again the word "employee" is going to have to be subject
21 to some court interpretation, though I think in the

1 cases, 999 out of a thousand, they know who are the
2 employees, that the General Assembly may distinguish but
3 the principle remains and no employee can lose his right
4 by legislation.

5 I don't know if that helps you.

6 THE CHAIRMAN: Apparently there are no further
7 questions.

8 While Delegate Bothe returns to her seat, I
9 will ask -- the pages have already distributed Amendment
10 L. It will be Amendment Number 21.

11 Delegate Willis.

12 DELEGATE WILLIS: Mr. Chairman, I rise on a
13 point of personal privilege. I would like to announce
14 the presence in the balcony at the rear of the chamber of
15 three very prominent Harford County citizens: Mr. Benton
16 Gross, Mr. H. Morrison Carroll, and Mr. C. Milton Wright.
17 Mr. C. Milton Wright, retired, was Superintendent of Schools
18 in 1945. He served 30 years in that position. He
19 spent a lifetime in education.

20 Since that time, he has been very busy and
21 has coming off the press this week a new book, "the History

1 of Harford County."

2 I would appreciate the Committee of the Whole
3 joining me in making these citizens welcome. (Applause.)

4 THE CHAIRMAN: The Clerk will read Amendment
5 Number 21.

6 MR. QUILLÉN: Amendment Number 21 to accompany
7 Minority Report R&P-1(B) to Committee Recommendation
8 Number R&P-1, by Delegates Bennett, Bothe, Dabrowski,
9 Hardwicke, Kosakowski, Mitchell, L. Taylor, and
10 Willoner.

11 On page 4 following line 23 of Section 9
12 Limitations on State Action add this new section:

13 "Section _____. Right to Organize and Bargain
14 Collectively.

15 "Employees shall have the right to organize and
16 bargain collectively through representatives of their
17 own choosing."

18 THE CHAIRMAN: The amendment has been seconded.
19 We are in a period of controlled debate, 15 minutes
20 each, controlled by Delegates Bothe and Kiefer.

21 The Chair recognizes Delegate Bothe.

1 DELEGATE BOTHE: Mr. Chairman, --

2 THE CHAIRMAN: For what purpose does Delegate
3 Pullen rise?

4 DELEGATE PULLEN: Mr. Chairman, a very personal
5 one. Mr. Wright has been a friend of mine for 40 years
6 and one of my colleagues, and one of the great men in
7 education in Maryland, and I would feel remiss if I did
8 not add my word of welcome to him today. (Applause.)

9 THE CHAIRMAN: Delegate Bothe.

10 DELEGATE BOTHE: I yield three minutes to
11 Delegate Wheatley.

12 THE CHAIRMAN: Delegate Wheatley.

13 DELEGATE WHEATLEY: Mr. Chairman, fellow
14 delegates, the issue presented by this amendment, I
15 think is a relatively clear one, has a right not pre-
16 viously recognized, developed in the last century, which
17 now warrants Constitutional recognition.

18 Certainly reasonable men and women can disagree
19 on this answer. I, however, think that answer should be
20 affirmative. In the last century the right to bargain
21 collectively by representatives of one's own choosing

1 has won almost universal acceptance.

2 The issue before us today is not one of
3 union shop or open shop. These decisions if made at all,
4 occur as secondary questions to be reached by the legisla-
5 ture, in the democratic election process.

6 The right sought here is a neutral one.
7 However, without this recognition, which the amendment
8 suggests, the basic issue of representation at all is
9 not resolved. It is absent and in its place we provide
10 unrecognized channels and actions that precipitate unrest
11 and confusion.

12 I would suggest that attempts to affirm the rule
13 of reason in this most vital area could best be made by
14 the adoption of this amendment, and therefore, Mr.
15 Chairman, and fellow delegates, I earnestly solicit your
16 support as reasonable men and reasonable women to weigh
17 the issue before you and thereby cast your vote in favor
18 of this amendment.

19 THE CHAIRMAN: Delegate Kiefer.

20 DELEGATE KIEFER: Mr. Chairman, I yield three
21 minutes to Delegate Child.

1 THE CHAIRMAN: Delegate Child.

2 DELEGATE CHILD: Mr. Chairman, ladies and
3 gentlemen of the committee, I rise to oppose this amend-
4 ment.

5 As I have said before, in the committee on
6 personal rights and the preamble, we had the duty of writ-
7 ing the bill of rights. We had laid down for us by the
8 Commission, after two years of study, rules and regulations
9 as to that bill of rights, and one rule, and the cardinal
10 rule, was that the bill of rights should state very
11 briefly and very clearly the rights which each individual
12 holds free from governmental action.

13 In other words, the individual holding free
14 his personal action as against the state.

15 Now, what do we have in this resolution? We
16 don't have an individual asking for a right. We have a
17 class, a class of people, of employees asking for a right,
18 not against the state, if you please, but against another
19 individual.

20 When we reached that point, I might say we had
21 many proposals, many witnesses, appearing, asking for

1 something in the bill of rights for this class against
2 that class, for this individual against that individual,
3 but we decided that all questions providing for rights of
4 one individual against another individual or one class
5 against another class had no place in the bill of rights
6 of this Constitution, and that is the main reason why
7 this proposal, and many others like it or similar to it,
8 not on labor but on many subjects, were excluded from
9 our consideration.

10 THE CHAIRMAN: You have one-half minute,
11 Delegate Child.

12 DELEGATE CHILD: Another reason why it would be
13 excluded, it was brought out in the testimony before
14 our committee that this same remedy had been sought
15 time and time again from the legislature of this state,
16 without avail, and that now they wanted to force the
17 legislature to act by putting this subject in the bill
18 of rights.

19 THE CHAIRMAN: Your time has expired, Delegate
20 Child.

21 DELEGATE CHILD: For those two reasons, the

1 committee rejected, and I ask you to rule with the
2 majority of the committee and reject this amendment.

3 THE CHAIRMAN: Delegate Bothe.

4 DELEGATE BOTHE: I yield two minutes to
5 Delegate Kosakowski.

6 DELEGATE KOSAKOWSKI: Mr. Chairman, fellow
7 delegates: about 40 years ago there was a terrible fire
8 in New York City at the Triangle Shirtwaist Factory. The
9 owner of the factory had not provided adequate fire es-
10 capes. Many of the employees, mainly women, who had
11 recently come to this country from Europe, were trapped
12 in the upper floors where they had to work 12 to 16 hours
13 a day for pitifully low wages.

14 This tragedy pointed out to the nation the
15 need of the working man and woman to have something to
16 say about their wages, their hours of work, and the con-
17 ditions under which they worked.

18 The Triangle fire was a major factor leading
19 to the enactment by Congress in 1935 of the Wagner Act.

20 The Wagner Act was the Magna Carta of labor, that
21 established as national policy the right of workers in

1 interstate commerce to organize and bargain collectively.

2 Today these rights are basic to our country,
3 to our state, and to our economic system. I support the
4 amendment because these rights should have Constitutional
5 recognition, and even more important, the right to
6 organize and bargain collectively ought now be extended to
7 those workers not covered by the National Labor Relations
8 Act.

9 I refer specially to migrant workers, waiters,
10 waitresses, laundry workers, and retail clerks, all of
11 whom receive low wages and need the most protection.

12 There are more than half a million workers in
13 private industry in Maryland not covered by Federal law.
14 In addition, there are more than 100,000 public employees
15 in this state not now protected.

16 This amendment would provide the basic coverage
17 all American citizens who work for a living are entitled
18 to. The people I represent in Baltimore know what hard
19 work means. They want this amendment passed. For all the
20 working men and women in the state, I urge you to vote for
21 this amendment.

1 THE CHAIRMAN: Delegate Kiefer.

2 DELEGATE KIEFER: Mr. Chairman, I yield three
3 minutes to Delegate Jett.

4 THE CHAIRMAN: Delegate Jett.

5 DELEGATE JETT: Mr. Chairman, fellow delegates,
6 I rise in opposition to this amendment. I think it is
7 a tremendous example of what not to put into the
8 Constitution.

9 As Delegate Child has said, we are putting in
10 here something of one class against another. As someone
11 else has spoken, if we are going to put this in, we might
12 as well put in references to the landlord and tenant,
13 borrower, lender, husband and wife, mother-in-law and son-
14 in-law.

15 This type of thing does not belong in the
16 Constitution that we are writing for all the people of this
17 state, and I should say to you again that it is not a
18 thing that should be in the Constitution because the
19 legislature has recognized it.

20 There has never been, so far as I know, one
21 single bit of anti-labor legislation put through our

1 legislature. In addition to this, as Chairman Bothe
2 recognized when she stood up, we have written into
3 the policy of our state the right of representatives and
4 employees to organize and to act for their own benefit.

5 I say to you that this is the type of thing that
6 we should leave to the legislature. They are equipped to
7 handle it. They are aware of the problem, and it is
8 not the type of thing that we should put into our Con-
9 stitution.

10 I ask you to vote against the amendment.

11 THE CHAIRMAN: Delegate Bothe.

12 DELEGATE BOTHE: I yield two minutes to Delegate
13 Borom.

14 THE CHAIRMAN: Delegate Borom.

15 DELEGATE BOROM: Mr. Chairman, fellow delegates,
16 I want to rise to support the amendment submitted by the
17 minority because it is my belief that there ought to be
18 within the Constitution that we are writing now a clear
19 and free right for every individual to organize and
20 bargain collectively.

21 Delegate Kosakowski, I think, has made the

1 case very well. There are many people who should not be
2 deprived by accident of employment of the right to
3 bargain collectively.

4 I think I would rather not indicate we are in
5 a class struggle, but I think we would have to recognize
6 the population to which this particular section may
7 have the most importance, represents a population that
8 has limited employment opportunities.

9 It also represents a population that although
10 they may have specific preferences for a particular
11 vocation, they should not be denied the right to bargain
12 collectively, to enhance or increase their earning po-
13 tential, and to have something to say about the working
14 conditions which prevail at their places of employment.

15 In a society of rapidly escalating income, it
16 is extremely important that intrastate workers have this
17 privilege and this right recognized in the Constitution
18 so that they will not find themselves in the bind of
19 the group to which Delegate Bothe referred during her
20 presentation at Church Home Hospital where although they
21 recognized certain conditions were against them, they in

1 effect do not have the opportunity or the option for
2 ample recourse to conditions which prevail.

3 I urge you to support this amendment.

4 THE CHAIRMAN: Delegate Kiefer.

5 DELEGATE KIEFER: Mr. Chairman, I rise on a
6 point of personal privilege, if I might.

7 I have received three letters which are from
8 the Maryland Classified Employees Association, Inc.,
9 Classified Municipal Employees Association of Baltimore
10 and the Baltimore County Classified Employees Association.

11 These came to me unsolicited and they came in
12 sufficient number to be distributed to every member, not
13 at the expense of the Convention but of these organiza-
14 tions.

15 I would like to have these distributed at this
16 time, if I may, sir.

17 THE CHAIRMAN: Do the pages have them?

18 DELEGATE KIEFER: Yes, sir.

19 THE CHAIRMAN: Do they know what they are?

20 DELEGATE KIEFER: Yes, sir.

21 THE CHAIRMAN: Delegate Miller.

1 DELEGATE MILLER: Mr. Chairman, I would not --
2 I would question whether this is a personal privilege or
3 an attempt to lobby on the floor at this point.

4 THE CHAIRMAN: Let me find out what they are.
5 Are these documents sent to you as Chairman of the Com-
6 mittee?

7 DELEGATE KIEFER: Yes, sir. These are all
8 addressed to the Committee on Personal Rights and
9 Preamble.

10 THE CHAIRMAN: Have they been heretofore presented
11 to the Committee?

12 DELEGATE KIEFER: No, sir, they just arrived.

13 DELEGATE BOTHE: Mr. Chairman.

14 THE CHAIRMAN: Just a second.

15 Delegate Kiefer, if these were documents that
16 had been heretofore considered by the Committee, I think
17 it would be proper to distribute them. I do not think
18 that we can permit documents to be distributed in the
19 course of debate otherwise.

20 We have followed the practice that delegates
21 can distribute memoranda and can incorporate in their

1 memoranda statements of others, but I think this would
2 go beyond that practice. I thought this was something
3 that had been heretofore considered by the committee, and
4 I think anything considered by the committee could be
5 considered by all delegates.

6 DELEGATE KIEFER: We have a report and we had
7 a hearing in which we had received material from the
8 Maryland Classified Employees Association prior to this,
9 but these letters just arrived, sir.

10 THE CHAIRMAN: Under the circumstances, I don't
11 think they should be distributed at this time.

12 Delegate Kiefer.

13 DELEGATE KIEFER: I yield three minutes to
14 Delegate Hostetter.

15 THE CHAIRMAN: Delegate Hostetter.

16 DELEGATE HOSTETTER: Mr. Chairman and members of
17 the committee of the Whole, first of all, let me state
18 this: I do not subscribe to Delegate Bothe's coffee shop
19 theory or organizing and collective bargaining.

20 I submit this amendment of the minority, viewed
21 in the clear light of day, says emphatically, without



1 spelling it out, that employees must join the union.

2 If this were not so, what would the meaning of
3 the words "organize and bargain collectively" be?

4 It is quite apparent that organization and
5 collective bargaining cannot take place in a vacuum.
6 Three paragraphs of the minority report refer to public
7 employees, and their need for this provision in Maryland's
8 Constitution.

9 At this point I should like to quote from a
10 statement of the Maryland Classified Employees Associa-
11 tion. I might add that these Maryland employees are
12 public employees, and I quote from this statement.

13 "Although the Minority Report in its presentation
14 leaves the reader with the impression that the Consti-
15 tutions of Hawaii, New Jersey, New York, and Missouri
16 Grant the right of collective bargaining to public as
17 well as private employees, the above interpretation of
18 those state's constitutions by their respective highest
19 judicial tribunals clearly state that the right of
20 collective bargaining is not granted to public employees.

21 "Therefore, it would be an exercise in futility,

1 and a lack of public responsibility, for the Maryland
2 Constitutional Convention to write into Maryland's basic
3 organic law the provision advocated for in the minority
4 report.

5 "The minority report also has mistakenly
6 stated the theory under which public employees have been
7 denied the right of collective bargaining. The public
8 employees have not been denied this right on the basis
9 of the tort law theory of 'The king can do no wrong', but
10 instead have been denied the right on the basis of, one,

11 the Constitutional principle that legislative authori-
12 ty cannot be delegated, and, two, sound public policy, as
13 stated in the above judicial decisions.

14 "Therefore, the honorable delegates of this
15 Convention are respectfully requested to omit any provision
16 for collective bargaining, because, one, private employees
17 have this right as a matter of law without the need for
18 a state Constitutional provision; two, sound public
19 policy dictates that the right should not be afforded to
20 public employees; three, public employees under existing
21 statutory law already have the right to belong to an

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1 association or union which can equitably represent them
2 before the state, its agencies and its political subdi-
3 visions."

4 It is apparent to me that the demand for this
5 amendment comes not from the employees of the industry
6 and the government of the state but from other sources.

7 I urge the defeat of this amendment.

8 THE CHAIRMAN: Delegate Kiefer, the Chair's
9 ruling went to the distribution of the letters to which
10 you refer,

11 I did not of course intend to indicate, as
12 indeed, I could not, that they could not be referred to
13 by you or any other person in the course of your debate.

14 Delegate Bothe.

15 DELEGATE BOTHE: Mr. Chairman, I yield two
16 minutes to Delegate Storm.

17 THE CHAIRMAN: Delegate Storm.

18 DELEGATE STORM: Mr. Chairman, I became sold
19 on this idea back when I was in the Navy. Up until that
20 time, I came from a very conservative county where labor
21 is not understood. I was very much opposed to the idea,

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1 but seeing it work at sea in the Merchant ships, I became
2 convinced that this right is a precious one and is good
3 for America.

4 I submit that the labor movement has made tre-
5 mendous strides for the good of America. I think they
6 are now responsible people. I think they are cleaning up
7 their own houses. We can respect them, and I think that
8 this is a good amendment.

9 THE CHAIRMAN: Delegate Kiefer.

10 DELEGATE KIEFER: Mr. Chairman, how much time
11 do I have left?

12 THE CHAIRMAN: Approximately nine minutes.

13 DELEGATE KIEFER: Mr. Chairman, ladies and
14 gentlemen of this committee, this is another time when I
15 find myself rising to vote against motherhood in favor of
16 sin. Please believe me, I am not.

17 I urge you to reject this thing resoundingly.
18 Now, I am not opposed to labor. I have probably been
19 engaged in hard labor as much as anybody here, and maybe
20 more so. I have partly worked my way through college in
21 the summertime working as a laborer, carpenter's helper.

1 I can remember climbing over scaffolding, a
2 hundred feet over the ground carrying a load of lumber and
3 when we worked away from home, I can remember boarding
4 with, living with men, and I still represent people and
5 have as friends labormen.

6 I am not opposed to labor. I hope Delegate
7 Storm and you people who will feel you have to vote for
8 this, that this is not an anti-labor position, but I
9 must call your attention again to the fact that we are
10 here writing a personal right, a declaration of rights
11 section, and this applies to all of the people, not just
12 to a segment of people or to a group, a pressure group.

13 Now, we have in our file, I have letters and
14 letters from people who are little people, who say,
15 give us the right to work. Nobody is opposed to negotia-
16 tions. Nobody is opposed to unions.

17 This can all be regulated by statute, but
18 we had Labor Day here on October 19 and the people we
19 had were the same old tired people who came down here
20 to the legislature.

21 There was management and labor. They were very

1 fine, sophisticated people. They got into an argument
2 among themselves, and labor wanted the right to organize
3 and bargain and management said, yes, you can have it,
4 but we want the right to work.

5 Now, some of you ladies and gentlemen -- not
6 only are there people who are not completely a hundred
7 percent in favor of one or the other, but even labor
8 itself is not completely, even the employees themselves
9 are not completely in favor of this.

10 There are 17,000 members of the Maryland Classi-
11 fied Employees Association, 7,000 members of the Municipal
12 Employees Association of Baltimore City. Some 1700 of
13 the Baltimore County Association.

14 I could read you what their presidents have
15 said in these letters, which came completely unsolicited
16 to me. Obviously, the proponents of this amendment are
17 afraid of what those letters would say.

18 I rather think that Delegate Bothe is like a
19 Boy Scout who is helping the old lady across the street.
20 You can see this Boy Scout Badge. I get involved in
21 this thing. I came across the couple. Here she was

1 dragging the old lady across the street.

2 I said, "What is the matter"? She said, "I
3 don't want to go across the street." I say to you, many
4 of these people don't want this thing in the Constitu-
5 tion. This doesn't belong here.

6 Now, Delegate Bothe explained there are four
7 constitutions out of 50 which mention this matter in
8 the Constitution. Two of them specifically spell out
9 that there is an entirely different ground rule between
10 public employees and private employees, and she has stated
11 unequivocally, this would apply down the line to all
12 employees.

13 I say to you ladies and gentlemen, this doesn't
14 apply to all up and down the line, and in those two
15 states where they made differentiations, Missouri and
16 New York, the courts held it does not apply to public
17 employees.

18 This is an action by a strong group of people,
19 me down here. I know they have their hand on your
20 shoulder. They are urging you and looking down from
21 the balcony wanting to know how you will vote, and I

1 hope you ladies and gentlemen will not be like that
2 girl in a famous Oklahoma play who sang "I am just a girl
3 who couldn't say no."

4 I hope you have the guts to say no. This is a
5 tough situation, I know, and I am not against labor, but
6 it does not belong in the Constitution. It can be ade-
7 quately handled by the legislature, and if you don't do your
8 duty on this thing, if you let this thing go into the Con-
9 stitution, you will put a lot of other things in.

10 It is not a matter just of labor, but labor
11 fighting amongst themselves.

12 I urge you to reject it and reject it resounding-
13 ly.

14 THE CHAIRMAN: Delegate Bothe.

15 DELEGATE BOTHE: According to my calculations,
16 Mr. Chairman, we have used nine minutes, is that correct?

17 THE CHAIRMAN: I think you have about six.

18 DELEGATE BOTHE: We would have six left, if I
19 am right.

20 THE CHAIRMAN: You have eight minutes left.

21 DELEGATE BOTHE: I will allot four minutes to

1 Delegate Gallagher.

2 THE CHAIRMAN: Delegate Gallagher.

3 DELEGATE GALLAGHER: Mr. Chairman, ladies and
4 gentlemen of the Committee, I don't think I will need
5 four minutes, but I think it is significant to note that
6 were this the 1867 Convention, that this very proposal
7 would be an attempt to put into the Constitution what
8 was then a crime.

9 I think that is one of the ironies of the
10 situation, because this is an example, a classic example
11 of an evolving right. I think it is a right which was
12 won at considerable difficulty and sacrifice, and I think
13 it is a right which becomes an additional and more
14 significant importance as the years go by.

15 We have moved from an agrarian economy into
16 an industrialized society. The great concentration of
17 population continues to take place in the urban areas.

18 I submit that the recognition and installation
19 of this particular right in the Constitution will promote
20 the opportunities for stability within our society and
21 within a very large segment of our society.

1 While recognizing that it can be accused of
2 being class legislation, it covers so significant a
3 portion of our society that I believe it has general
4 public application and therefore is not parochial or
5 individualized in the usual sense of the word.

6 Now, it seems to me that simply because the legis-
7 lature has not acquiesced in attempts to make this right
8 known in statutory form is no argument against it. Indeed,
9 it may be an argument for it.

10 I simply state that here is an opportunity to
11 put into the Constitution a right which seems to me to be
12 very significant for orderliness and for genuine oppor-
13 tunities for communication in our society as we know it
14 today.

15 It is, as I say, an unusual right in that it has
16 evolved from a crime to a right, or at least recogni-
17 tion as a crime, to recognition as a right. I don't think
18 we ought to distinguish our vote on this, as Chairman
19 Kiefer said, between pro-labor and anti-labor. I agree
20 with him in that respect.

21 I would not hope anybody would vote simply with

1 definition of that attempted dichotomy but in the interest
2 of promoting industrial peace, in the interest of showing
3 that Maryland is recognizing the fact that this is a
4 significant matter for a significant portion of our
5 society, I do hope that the amendment will be accepted.

6 THE CHAIRMAN: Delegate Kiefer, you have two
7 and a half minutes you may allot.

8 DELEGATE KIEFER: I will reserve that, if I
9 might. May I reserve it?

10 THE CHAIRMAN: Yes.

11 Delegate Bothe.

12 DELEGATE BOTHE: How long did Delegate Gallagher
13 require?

14 THE CHAIRMAN: He spoke two and a half of
15 four minutes.

16 DELEGATE BOTHE: I will allot the remaining--

17 THE CHAIRMAN: You have four and a half minutes.

18 DELEGATE BOTHE: I will allot two and a half
19 minutes to Delegate Bard.

20 THE CHAIRMAN: Delegate Bard.

21 DELEGATE BARD: Mr. Chairman, Dr. Robert

1 Hutchins, former President of the University of Chicago
2 and currently Director of the Fund for the Republic
3 States, said that the principal reason why civil liberties
4 as traditionally defined and defended do not interest the
5 Americans is that they are inadequate to express the
6 true dimensions of the problems of freedom and justice
7 today.

8 He insists by way of example, that the individual
9 now needs protection from, quote, "the remorseless tenden-
10 cy of the industrial system."

11 In the 18th and 19th centuries, we accorded man
12 the rights of protections to operate as a free individual.
13 We have seen the problems that came to man in society
14 because man was free and creative, but in this century,
15 particularly in this latter third of the 20th century, it
16 is impossible for man to be free when acting alone in
17 the economic realm.

18 The sheer nature of our society demands man's
19 freedom to act in groups when dealing with his economic
20 requirements. Within this frame of reference, this right
21 does deserve Constitutional status.

1 America's great economic development has been
2 due to the interaction and cooperation between labor and
3 management. Our nation's strong position in the world is
4 due in largepart to organized labor, a position which
5 assures man's economic freedom and his creativity.

6 Finally, I have seen what happens when man
7 has not had these rights and it is assumed. In recent
8 years I have seen custodial and food service workers
9 move from passive interest in what they do to one where
10 they are creative, and think about what they do, to one
11 where the dignity and work of what they do is significant,
12 because they have become a part of an organized group.

13 Man acting alone in the economic realm just
14 has no possibility for success. As Robert Hutchinson said,
15 this is of Constitutional stature.

16 THE CHAIRMAN: Delegate Bothe.

17 DELEGATE BOTHE: Mr. Chairman,--

18 THE CHAIRMAN: You have two minutes left.

19 DELEGATE BOTHE: Am I to allot them now? I
20 understand Delegate Kiefer has reserved some time.

21 THE CHAIRMAN: The sponsor of the amendment

1 has the right to open and the oponent closes. He has
2 reserved some of his time to close.

3 DELEGATE BOTHE: The remaining time I would like
4 to give to Delegate Sickles.

5 THE CHAIRMAN: You have two minutes, Delegate
6 Sickles.

7 DELEGATE SICKLES: Mr. Chairman and fellow
8 delegates, I think it is abundantly obvious by now that
9 what is suggested by the minority in its report, this
10 amendment before us, is just the barest recognition of the
11 essential rights of employees.

12 I think we will all understand the underlying
13 reason for government regulations with respect to
14 labor relations, to somehow bring about a balance between
15 the employer and his employees.

16 At this point in history, I don't imagine
17 anyone would suggest that otherwise, this is true and
18 to its credit, Maryland has had on its books for many
19 years the ban against the yellow dog contracts. No one
20 would suggest that this provision would bring about a
21 balance between the bargaining power of labor and

1 management.

2 It is a very, very small thing that we do, but
3 it will improve the employee's position just a bit.

4 No one can claim that the provision will compel
5 an employer to sign a contract, though he might have
6 to listen under some limited circumstances, and he could
7 not coerce his employees for asking him to listen. No
8 one, I don't believe, can claim that there is any inherent
9 evil of an employee getting -- of employees getting
10 together and designating their own representative.

11 If this becomes part of our Constitution, then
12 they could not be fired by their employer for doing so.

13 That is about all that this provision does. It
14 is a very, very small thing, but it is a firm step down
15 a long road that will result in dignity and security for
16 many citizens of this state.

17 There are those who suggest that this should not
18 be in the Constitution, and they have applied some rule that
19 they have accepted for themselves as to what should be in
20 a bill of rights.

21 I remember once that Franklin Roosevelt spoke

1 roughly to this argument --

2 THE CHAIRMAN: You have a little less than one-
3 quarter of a minute.

4 DELEGATE SICKLES: --but with the occasional
5 thoughts of a government living in the spirit of charity,
6 then the consistent omissions of a government frozen in the
7 ice of its own indifference.

8 THE CHAIRMAN: Delegate Kiefer, you have two
9 and a half minutes to close.

10 DELEGATE KIEFER: Mr. Chairman, ladies and
11 gentlemen, I am like a lone tree battling all these
12 experienced and more strong speakers.

13 However, I have to reiterate, we are here
14 battling for all of the people, not just for a segment
15 and I say to you I am not sure all labor is in favor
16 of this, just certain groups.

17 I say a lot of the things said are non sequiters.
18 They are fine principles to which I am a hundred percent
19 and wholly in agreement; I don't think this belongs in
20 the Constitution. Furthermore, It is not in the same
21 category with the conservation and protection against bad

1 business practices, which applies to everybody.

2 This just applies to some people and there are
3 some people who will say this is a right, some people
4 say please don't force this on me. It is not the kind
5 of inalienable, natural permanent right that we need to
6 freeze into this thing, into this Constitution, par-
7 ticularly when anybody -- when this can be put on the
8 books and is on the books in many states and in this
9 state.

10 Labor is quite well protected, and perhaps can
11 be better protected. I don't object to that. I simply
12 say that it doesn't belong here. I am like the old fellow
13 who went coon or bear hunting and shot at the bear and
14 missed him. The bear came chasing after him. He ran
15 down the hill. He finally grabbed the tree and swung up.
16 The bear went after him, and he said, "Oh Lord, please
17 help me, but if you can't help me, don't help the bear."

18 THE CHAIRMAN: Delegate Weidemeyer.

19 DELEGATE WEIDEMEYER: I wonder if Mr. Kiefer
20 would yield for a question.

21 THE CHAIRMAN: Delegate Kiefer, do you yield

1 for a question? You have one minute.

2 DELEGATE KIEFER: Yes, sir.

3 THE CHAIRMAN: Delegate Weidemeyer.

4 DELEGATE WEIDEMEYER: You mentioned three let-
5 ters. Would you state the names of the organizations from
6 whom you got those letters?

7 THE CHAIRMAN: Delegate Kiefer.

8 DELEGATE KIEFER: Maryland Classified Employees
9 Association, Inc., Baltimore County Classified Employees
10 Association, Inc., and the Classified Municipal Employees
11 Association, Inc., Baltimore City, representing something
12 over 25,000 people, all saying this is of legislative
13 intent and character, and please don't put it in the
14 Constitution.

15 THE CHAIRMAN: Delegate Weidemeyer.

16 DELEGATE WEIDEMEYER: Is their position different
17 at the present time from what it was at the hearings?

18 THE CHAIRMAN: Delegate Kiefer.

19 DELEGATE KIEFER: No, we had people who
20 presented their point of view shortly after the committee
21 hearings. The committee knew about it and was read

1 correspondence and papers from them.

2 THE CHAIRMAN: That ends the period of control-
3 led debate.

4 Before we enter onto the uncontrolled debate
5 period, the Chair has had sent to the desk several amend-
6 ments to this section.

7 I will call them in the order in which they apply
8 to the language of the amendment. Apparently the first
9 one would be Delegate Weidemeyer.

10 Do you desire to offer your amendment AB?

11 DELEGATE WEIDEMEYER: Mr. President, I think
12 in the order of saving time, probably we should vote on
13 the amendment first. If the amendment is approved, I
14 think my amendment to that would be in order to clarify
15 it.

16 THE CHAIRMAN: That would be true as to each of
17 the amendments that have been sent to my desk. They
18 could either be offered now or if the amendment, Amend-
19 ment 21 is adopted, they could be offered subsequently.

20 DELEGATE WEIDEMEYER: I suggest that in the
21 order of saving time and it might save it if we get the

1 indication on the first vote.

2 THE CHAIRMAN: Very well.

3 For what purpose does Delegate Vecera rise?

4 DELEGATE VECERA: Mr. Chairman, if I could
5 clarify a point, sir, that Delegate Kiefer made.

6 THE CHAIRMAN: The time has expired. I will
7 recognize you as soon as we come to the uncontrolled
8 debate.

9 Delegate Macdonald, you have an amendment. Do
10 you desire to offer it now or do you want to wait until
11 action on Amendment 21?

12 DELEGATE MACDONALD: I desire to offer it as an
13 amendment to the amendment, Mr. Chairman.

14 THE CHAIRMAN: You can offer it as an amendment
15 to the amendment either now or later. I understand you
16 want to offer it now?

17 DELEGATE MACDONALD: I don't understand.

18 THE CHAIRMAN: You have the option. You can
19 offer it now as an amendment to the amendment, in which
20 event it would be voted on before consideration of
21 Amendment 21. If adopted then, Amendment 21 would be

1 submitted as thus amended, or Amendment 21 can be acted
2 upon if it is adopted, then Amendments to it would be
3 in order.

4 You can follow either course. I want to be sure
5 I understand which you want to follow.

6 DELEGATE MACDONALD: In that case, I will hold
7 it until later.

8 THE CHAIRMAN: The Chair by the statement just
9 made did not mean to indicate that if Amendment 21 is
10 adopted, that Amendments to change the language of
11 Amendment 21 would be in order.

12 Amendments that would add language to 21 would
13 be in order. And that is the purpose of both the amend-
14 ments that the Chair has received.

15 We will then enter a period of limited but
16 uncontrolled debate.

17 Does any delegate desire to speak in favor of
18 the amendment?

19 Delegate Vecera, do you desire to speak in
20 favor?

21 DELEGATE VECERA: Mr. Chairman, if I could
clarify a point Delegate Kiefer made previously. He

1. The first part of the document is a letter from the President of the United States to the Congress, dated January 3, 1801. It contains a report on the state of the Union and the progress of the government during the year 1800. The letter is signed by James Madison.

2. The second part of the document is a report from the Secretary of the Treasury, dated January 3, 1801. It contains a detailed account of the financial state of the government and the measures taken to improve the public credit.

3. The third part of the document is a report from the Secretary of the Navy, dated January 3, 1801. It contains a detailed account of the naval operations and the state of the fleet during the year 1800.

4. The fourth part of the document is a report from the Secretary of the War, dated January 3, 1801. It contains a detailed account of the military operations and the state of the army during the year 1800.

5. The fifth part of the document is a report from the Secretary of the Interior, dated January 3, 1801. It contains a detailed account of the land and mineral resources of the United States and the measures taken to develop them.

6. The sixth part of the document is a report from the Secretary of the State, dated January 3, 1801. It contains a detailed account of the foreign relations of the United States and the measures taken to maintain peace and harmony with the other nations.

7. The seventh part of the document is a report from the Secretary of the Department of the Interior, dated January 3, 1801. It contains a detailed account of the land and mineral resources of the United States and the measures taken to develop them.

8. The eighth part of the document is a report from the Secretary of the Department of the Navy, dated January 3, 1801. It contains a detailed account of the naval operations and the state of the fleet during the year 1800.

9. The ninth part of the document is a report from the Secretary of the Department of the War, dated January 3, 1801. It contains a detailed account of the military operations and the state of the army during the year 1800.

10. The tenth part of the document is a report from the Secretary of the Department of the State, dated January 3, 1801. It contains a detailed account of the foreign relations of the United States and the measures taken to maintain peace and harmony with the other nations.

1 stated that he had a labor day in his committee in which
2 the same old tired men were there. I think perhaps the
3 comment was made in the heat of discussion, and that per-
4 haps he did not fully intend the import of that
5 meaning.

6 I was there and many associates of mine were
7 there, and I feel if it was made in the heat of discussion
8 I would hope he would rectify that comment. Thank you.

9 THE CHAIRMAN: Delegate Kiefer.

10 DELEGATE KIEFER: Mr. Chairman, I would hasten
11 to correct that. I didn't mean that. What I mean was
12 the same old tired proceedings. They were very delight-
13 ful men, many of them my friends. They are highly so-
14 phisticated, highly articulate and they are highly, I am
15 afraid, persuasive.

16 THE CHAIRMAN: Very well.

17 Delegate Vecera.

18 DELEGATE VECERA: Mr. Chairman, I am glad I
19 gave Delegate Kiefer the opportunity to clarify the
20 record on that.

21 THE CHAIRMAN: Any delegate desire to speak

1 in favor of the amendment?

2 Delegate Bennett.

3 DELEGATE BENNETT: Mr. Chairman, ladies and
4 gentlemen of the committee, I would like first of all to
5 disclaim the fact that in speaking for this amendment, any-
6 one has come to see me, that there has been any pressure
7 whatsoever upon me, and I come from a county with tens of
8 thousands of Federal workers in it, the great majority of
9 them belonging to some government employees union.

10 They have kept strictly away from me, and so
11 there are no pressures upon me when I speak in favor of
12 this amendment.

13 I speak and ask your indulgence, on just two
14 short points.

15 First of all, I think and believe that the
16 history of labor legislation shows the importance of
17 having something of this kind in the Constitution. Courts
18 have been notably conservative, not to say reactionary,
19 in interpreting the rights of the laboring people and
20 the rights of the General Assembly in enacting such legis-
21 lation.

1 I want to bear down on that point. But perhaps
2 my experience as a government officer will be of some use
3 to you, because a great deal has been said about the right
4 of public employees to organize.

5 When Federal statutes and executive orders
6 authorized employees to organize, I was very apprehensive
7 about it as being in charge of 5,000 custodial officers
8 engaged in law enforcement.

9 There could be no group more vital to the
10 safety of our country, and I was most apprehensive about
11 it, but as time went on, I came to accept it and believed
12 that it was a great morale builder for the employees, much
13 help to the administrator, and of real significance in
14 promoting better relations between management and the
15 employees.

16 We talked about such things as work schedules;
17 we talked about promotion policies; we talked about and set
18 up methods of selection procedures, grievance procedures,
19 organizations or organized social functions, all of which
20 contributed to the wellbeing of our people.

21 Since this organization has been in effect, the

1 turn-over, the amount of turn-over in our service has
2 decreased and the turn-over among a group of this kind,
3 where manpower is so short, has heretofore been great.

4 THE CHAIRMAN: You have one-quarter minute,
5 Delegate Bennett.

6 DELEGATE BENNETT: Our employees of course, could
7 not strike but this opportunity to organize goes beyond
8 that. Its great importance and significance is as a morale
9 builder and an opportunity for people to speak with
10 their bosses. I hope this amendment passes.

11 THE CHAIRMAN: Any delegate desire to speak in
12 opposition? Delegate Marvin Smith.

13 DELEGATE M. SMITH: Mr. Chairman, my inherited
14 prejudices, if one could have such, would be on the side
15 of labor. My father spent his entire life working as
16 a printer for others. His father before him worked with
17 his hands for his entire adult life.

18 Now, Mr. Chairman, really what is being
19 attempted to accomplish here is to organize public
20 employees. This is a matter that should be studied by
21 the General Assembly, not done here.

1 Reference has been made to the number of agri-
2 cultural workers. The average farmer employs an insuf-
3 ficient number of people to be worth an attempt to or-
4 ganize.

5 Yes, reference has been made to migratory
6 workers and there are times when a farmer will employ a
7 number of migratory workers, but for very short periods
8 of time and the Department of Agriculture represents
9 those people and tells a farmer what he must pay, so
10 really, what we are really talking about here is an
11 attempt on the part of organized labor to reach out and
12 to pick up the public employees, and I say to you sir,
13 that this is a matter for General Assembly action.

14 THE CHAIRMAN: Any other delegate desire to speak
15 in favor of the amendment?

16 Delegate Mitchell.

17 DELEGATE MITCHELL: Mr. President and fellow
18 delegates, the preamble to the Federal Constitution says
19 that, and that is the purpose of all Constitutions, we
20 the people, in order to form a more perfect union and to
21 establish justice and insure domestic tranquility, and

1 so forth.

2 I would say that it is unrealistic not to
3 recognize that the substitution in American life for
4 the bargaining table instead of the streets and the
5 riots that preceded the recognition of the exploitation
6 of human labor in this country has not been an important
7 gain in the growth of our nation, and I want to speak
8 from the standpoint of peace, the assurance of domestic
9 peace.

10 It seems to me that this technique which we
11 have evolved out of the painful years, when there was no
12 recognition of the right of working people to organize,
13 to insure that their labor, which was all that they had
14 to offer in the marketplace, would not be exploited, so
15 that they could protect their homes and their children and
16 themselves from the bitter fruits of that exploitation,
17 has given to the working people hope and faith in the
18 founding principles of this country, and when you take
19 the average employee in a position of asking for his
20 rights, and the position of the employer, you have a
21 basic inequality, because the employer is at the highest

1 point in that relationship of power.

2 THE CHAIRMAN: You have one-half minute,
3 Delegate Mitchell.

4 DELEGATE MITCHELL: Therefore, the hope that it
5 has given the individual worker against the exploitation
6 of his labor has been his right to join with his fellow
7 workers and sit down as equals at the bargaining table
8 with the employer.

9 I would say that the history of organized labor
10 in this country which has been recognized by our national
11 government and is beginning to be recognized by our
12 state government, is the history of a nation's struggle
13 to achieve equality for all of the people and to sub-
14 stitute peaceful techniques of insuring justice instead
15 of the streets and riots.

16 THE CHAIRMAN: Any other delegate desire to
17 speak in opposition?

18 Any other delegate desire to speak in favor?

19 Delegate Vecera.

20 DELEGATE VECERA: Mr. Chairman and fellow
21 delegates, we have written them for a Constitution which

1 benefits the legislative branch, the judicial and the
2 executive.

3 This part of the Constitution is not reached
4 by many, many people throughout this state, but now we
5 delegates have an opportunity in which we can vote for
6 a particular proposal, this amendment before us, in which
7 we will definitely reach untold thousands of people
8 throughout the state that do not have any contact with the
9 government whatsoever.

10 They are simply merely hard-working people. I
11 think we owe them the duty and the responsibility, and
12 therefore I think it only right and proper and just that
13 we certainly vote for this amendment in this form.

14 THE CHAIRMAN: Are you ready for the question?
15 The Clerk will ring the quorum bell.

16 The question arises on the adoption of Amendment
17 21. A vote Aye is a vote in favor of the amendment; a
18 vote No is a vote against.

19 Cast your votes.

20 Has every delegate voted? Does any delegate
21 desire to change his vote?

1 The Clerk will record the vote.

2 There being 83 votes in the affirmative and 37
3 in the negative, the amendment is adopted.

4 Delegate Weidemeyer.

5 DELEGATE WEIDEMEYER: Mr. President, at this
6 time I would like to offer Amendment AP, as an amendment
7 to Amendment Number 21.

8 THE CHAIRMAN: The pages will distribute Amendment
9 AP. Do all delegates have a copy of the amendment? This
10 will be Amendment 22. It will not now be in the form of
11 an amendment to the amendment.

12 Will you please therefore, mark your copies
13 as follows: in line 1, it should read, on page 1 of
14 the section added by Amendment 21, in line 8 strike out
15 the word "shall", et cetera.

16 The Clerk will read the amendment.

17 MR. QUILLEN: On page 1 of the section added
18 by Amendment 21, strike out the word--

19 THE CHAIRMAN: In line 8.

20 MR. QUILLEN: In line 8, strike out the word
21 "employees" and insert in lieu thereof the following:

1 "All employees, except governmental employees of the state,
2 its subdivisions, municipalities, or those indirectly
3 employed under contracts with the state, its subdivisions
4 and municipalities,".

5 THE CHAIRMAN: The amendment has been submitted
6 by Delegate Weidemeyer. Is there a second?

7 (The amendment was seconded.)

8 THE CHAIRMAN: The amendment has been seconded.

9 Delegate Weidemeyer, the time for luncheon
10 recess is about here. I think it would be better if we
11 continue after lunch.

12 The Chair recognizes Delegate Powers.

13 DELEGATE POWERS: Mr. Chairman, I move the
14 Committee of the Whole rise and report that it has not yet
15 concluded consideration of Committee Recommendation R&P-1.

16 THE CHAIRMAN: All in favor signify by saying Aye;
17 contrary, No. The Ayes have it. It is so ordered.

18 The Convention will please come to order.

19 (The mace was replaced by the Sergeant at Arms.)

20 (Whereupon, at 12:55 p.m., the Committee of the
21 Whole rose, and the Convention reconvened.)

1 THE PRESIDENT: On behalf of the Committee of
2 the Whole, the Chair reports that the Committee has had
3 under consideration Committee Recommendation R&P-1, that
4 it still has it under consideration, and desires leave to
5 sit again.

6 Are there any announcements necessary to be
7 made by committee chairmen before lunch?

8 Delegate Gallagher.

9 DELEGATE GALLAGHER: Mr. Chairman, ladies and
10 gentlemen of the Committee, the Committee on the Legis-
11 lative Branch will meet at 1:45 in the committee room.

12 THE PRESIDENT: Any other announcements by
13 committee chairmen?

14 Delegate Mudd.

15 DELEGATE MUDD: Mr. Chairman, the Committee on
16 the Judicial Branch will meet at 1:15 in the committee
17 room.

18 THE PRESIDENT: Any other announcements by
19 committee chairmen?

20 Any other announcements by other delegates?

21 All delegates present now not present at

1 initial roll call may indicate their presence on the
2 supplemental roll call.

3 The Clerk will record the supplemental roll
4 call.

5 (The roll was called.)

6 THE PRESIDENT: The Chair recognizes Delegate
7 Powers.

8 DELEGATE POWERS: Mr. President, I move we
9 recess until 2:00.

10 THE PRESIDENT: Please note that the recess is
11 one hour, not one hour and a half.

12 All in favor signify by saying Aye; contrary,
13 No. The Ayes have it. It is so ordered.

14 Please note that we reconvene at 2 p.m., not
15 2:30, 2 p.m.

16 (Whereupon, at 12:58 p.m. the Convention was
17 recessed, to reconvene at 2:00 p.m., of the same day.)
18
19
20
21

1 THE PRESIDENT: The Sergeant at Arms will
2 clear the aisles and close the doors.

3 The Convention will please come to order.

4 Roll call.

5 (Whereupon, a roll call was taken.)

6 THE PRESIDENT: Have all Delegates answered
7 roll call?

8 The Clerk will record the roll call.

9 There being a quorum present, the Convention
10 is in session.

11 For what purpose does Delegate Churchill Murray
12 rise?

13 DELGATE MURRAY: Point of personal privilege.

14 THE PRESIDENT: State the privilege.

15 DELEGATE MURRAY: Two days ago Delegate White
16 stole my story. It was a good story about a good mule.
17 I would like to demonstrate to him that there are no hard
18 feelings in order that he may have two mules instead.
19 (Laughter).

20 THE PRESIDENT: Delegate Hostetter.

21 DELEGATE HOSTETTER: I rise to a point of

1 personal privilege.

2 By the way, that was White mule that was
3 passed back there.

4 I would like to have introduced and have the
5 Convention recognize two students from the Northeast
6 Maryland High School in the gallery to the rear. They
7 are down here today observing our Constitutional
8 Convention in action, Larry Wiggins and Ronnie Gamble.

9 THE PRESIDENT: Delighted to have them.
10 (Applause).

11 Delegate White.

12 DELEGATE WHITE: Mr. Chairman and members
13 of the Convention, I would like to state that indeed
14 I have made progress since I have been down here and to
15 also point out that my second mule is a real corker.
16 (Laughter and applause).

17 THE PRESIDENT: Delegate White.

18 DELEGATE WHITE: The credit for the word
19 "corker" goes to Delegate Schneider. Thank you, Delegate
20 Schneider.

21 THE PRESIDENT: The Chair proposes to take up

1 the second readers at the session this evening rather
2 than this afternoon in order to allow you ample time to
3 review the reports of the Committee on Style, Drafting
4 and Arrangement.

5 In connection with that, let me indicate the
6 procedure that will be followed in considering these
7 reports. Each of the four reports that will come
8 before you this evening is relatively simple since each
9 Committee recommendation which is the subject matter of
10 a report is one paragraph. But we will follow the same
11 procedure when we have more elaborate reports where
12 there are a number of sections.

13 The Committee Recommendation after action by
14 the Committee of the Whole as reported to the Convention
15 was referred to the Committee on Style so that it comes
16 back to the Convention with the report of the Committee
17 on Style submitting for your consideration certain amend-
18 ments.

19 Since they are amendments proposed by a
20 Committee, they are entitled to priority of consideration.

21 The Chair would therefore propose with respect

1 to each such report to the Committee on Style and second
2 reader of the Committee Recommendation to consider first
3 section by section where there is more than one section,
4 the amendments proposed by the Committee on Style and
5 we will consider as germane only amendments which go to
6 questions of style.

7 If a Delegate desires to change language
8 suggested by the Committee on Style for stylistic reasons
9 or change other language not changed by the Committee
10 on Style for stylistic reasons, he should do so by
11 written and printed amendment submitted in accordance
12 with the procedures indicated yesterday.

13 If a Delegate desires not to submit suggested
14 changes, but merely disagrees with the recommendation
15 of the Committee on Style and desires to submit to the
16 Convention the question of deletion of the change
17 suggested, this can be more simply accomplished not by
18 having an amendment to delete but simply by having
19 any such Delegate request that the amendment of the
20 Committee on Style be submitted to separate vote.

21 If the amendment is approved by a majority,

1 it would be carried and, if not, it would be lost.
2 Therefore, if your purpose is simply to delete the change
3 made by the Committee on Style, it will not be necessary
4 for you to have a printed amendment, but when the Chair
5 calls for consideration of the particular section, you
6 can get recognition and ask simply that the amendment
7 submitted by the Committee be submitted to separate vote.
8 It would then be put to a vote forthwith.

9 After consideration of the entire article or
10 whatever sections may be embraced in the report of the
11 Committee, for all stylistic amendments you will then have
12 submitted to you the question of approval of the amendments
13 submitted by the Committee on Style. A vote on that
14 does not necessarily mean a vote for adoption of the
15 recommendation. It merely is a vote indicating approval
16 of the stylistic changes.

17 We will then consider the Committee Recommend-
18 ation as open to further amendment, not of stylistic
19 character.

20 If the Recommendation embraces more than one
21 section, we will go through this section by section.

1 After consideration of the entire Recommend-
2 ation for purposes of amendment, section by section,
3 it will then be submitted to you for adoption on second
4 reader as amended, if amended; otherwise not.

5 In this way, we will consider the second
6 reader recommendation first solely for equestions of
7 style and secondly for questions of substance and avoid
8 confusion which would ctherwise result.

9 Now, we will follow that practice this evening,
10 although in each instance the recommendations submitted
11 this evening are of one section or paragraph only and
12 we won't have as many complications.

13 For what purpose does Delegate Stern rise?

14 DELEGATE STERN: I have a question.

15 THE PRESIDENT: State the question.

16 DELEGATE STERN: Not for this evening, but
17 when would be an opportunity to make a suggestion: Suppose
18 Style takes a paragraph from one section and places it
19 somewhere else, like takes it out of finance or local
20 government into finance and you prefer to see it in a
21 final document in another place. When would be the

1 opportunity to bring that up?

2 THE PRESIDENT: The first opportunity to bring
3 it up would be in most instances when you reach that
4 section in the report of the Committee on Style. In
5 other words, if in a report submitted to you, say
6 on local government; the Committee Recommendation is that
7 a certain section be included in a different Article
8 and you disagree, we can take that up at the time we are
9 considering the report of the Committee.

10 Delegate Bard.

11 DELEGATE BARD: Mr. President, the vote that
12 takes place on second reading as to style and substance,
13 would it be a majority for approval? Would it be the
14 majority of those present ... all that is necessary for
15 approval on second reading?

16 THE PRESIDENT: You mean the majority of
17 those present and voting?

18 DELGATE BARD: Yes.

19 THE PRESIDENT: The provision of the
20 enabling act requiring the majority of the whole number
21 of Delegates as the Chair recalls it applies to final

1 approval.

2 DELEGATE GRUMBACHER: I believe it applies to
3 final approval of each Article.

4 THE PRESIDENT: That is correct. The
5 second reader is not final approval.

6 DELEGATE GRUMBACHER: The third reader would
7 be the entire Constitution as we go through it article
8 by article.

9 THE PRESIDENT: I don't know, it depends on
10 how the Committee on Style submits it. It could be
11 by articles or by sections or by the entire article.

12 DELEGATE GRUMBACHER: As I remember the
13 enabling act, I think it would be by each article because
14 we have to approve it by 72 points.

15 THE PRESIDENT: We are not at that point.
16 When we get to final approval we will decide what we
17 have to do.

18 Any further questions as to procedure?

19 Delegate Malkus.

20 DELEGATE MALKUS: Mr. President, you know
21 that I am familiar with what we did in the Legislature.

1 Of course, that doesn't mean anything here, but it was
2 my understanding that there would be a vote on each
3 article which would require a majority of those that are
4 elected. That is what we found out on the floor of
5 the Maryland Senate.

6 THE PRESIDENT: Delegate Malkus, the Chair
7 has not indicated that there would not be.

8 DELEGATE MALKUS: I felt that you knew that
9 because you certainly sat in the gallery long enough
10 when we discussed this subject matter and I really
11 believe that we should have the right to vote on each
12 article with what the law says, and the law says
13 there shall be a majority of those in office, a majority
14 of 142 on each article. That was well-discussed and
15 well-debated.

16 I don't care what the Committee on Style
17 wants to say, but you know, and I know, that was
18 what the Legislature intended to do.

19 THE PRESIDENT: Again, the Chair says to
20 you, Delegate Malkus, that it has not indicated to
21 the contrary. I don't see the point of your statement.

1 Delegate Malkus.

2 DELEGATE MALKUS: I don't want to argue
3 with you, but yesterday --

4 THE PRESIDENT: I am not arguing with you.
5 I am agreeing with you. (Laughter).

6 DELEGATE MALKUS: What you are doing, Mr.
7 President, you are telling me what you have been doing
8 for a long time and that is all right, you are the boss.
9 But now I rise upon a point of inquiry.

10 THE PRESIDENT: State the inquiry.

11 DELEGATE MALKUS: You said yesterday that
12 that which you said as far as the ground rules are
13 concerned will be given to us in writing. Have you,
14 as yet, done that?

15 THE PRESIDENT: It is not yet in writing,
16 it is partly in writing. I hope to get it this after-
17 noon.

18 DELEGATE MALKUS: We can expect that in
19 ample time before we take up the subject matters?

20 THE PRESIDENT: I would think so.

21 DELEGATE MALKUS: Thank you.

1 THE PRESIDENT: If there is any question
2 about what the Chair said yesterday, you can ask right
3 now. The rules that the Chair indicated were relatively
4 simple.

5 DELEGATE MALKUS: That is, Mr. President,
6 of course, one man's opinion and I am a little bit
7 confused. You talked kind of long and very much to the
8 point, but I would like to have what your ground rules
9 are in writing so I can plan accordingly and I would
10 like to have them in ample time before we take up now
11 the important subject matters which we are going to go
12 ahead and pass. That which we have talked about before
13 is lay talk and now we are getting into the real serious
14 subject matter, something I thought we should have taken
15 up a long time ago.

16 But be that as it may, I want to know what
17 the rules are well in advance so that I will be able
18 to understand and have an opportunity to go ahead and
19 study the finished subject matter.

20 THE PRESIDENT: Any further questions?

21 The Chair recognizes Delegate Powers.

1 DELEGATE POWERS: Mr. President, I move the
2 Convention resolve itself to a Committee of the Whole
3 for the purpose of considering^{the}/general orders of the day.

4 THE PRESIDENT: Is there a second?

5 (The motion was duly seconded.)

6 THE PRESIDENT: All in favor signify by saying
7 Aye; contrary, No.

8 The Ayes have it and it is so ordered.

9 (Whereupon, at 2:25 p.m., the Convention
10 resolved itself into the Committee of the Whole.)

11 (The mace was removed by the Sergeant at Arms.)

12 THE CHAIRMAN: The Committee of the Whole
13 will please come to order.

14 We still have under consideration Committee
15 Recommendation R&P-1, and under immediate consideration
16 is Amendment 22 proposed by Delegate Weidemeyer.

17 The Chair recognizes Delegate Weidemeyer to
18 speak to the Amendment.

19 DELEGATE WEIDEMEYER: Mr. President and
20 members of the Committee, the Amendment No. 21 which
21 we adopted this morning is one of the worst amendments

1 and one of the worst sections that we could have possibly
2 included in our Constitution. I think our Committee
3 on Personal Rights correctly concluded that such a section
4 should not be included within the Declaration of Rights.

5 When we adopted Amendment 21 which said
6 employees without qualification shall have the right to
7 organize and bargain collectively through representatives
8 of their own choosing, we have not limited, we have
9 opened up the area to all employees of whatsoever nature
10 wherever they are in the State, domestic and everything
11 else.

12 We have also opened it up to the employees of
13 the State, all governmental employees, subdivisional
14 employees, municipalities and many other areas in which
15 probably the Legislature should have a say as to whether
16 or not there should be organization of labor unions
17 and collective bargaining with those municipalities or
18 with the State.

19 Mr. President, if I were an ardent labor
20 worker interested in organizing labor and gathering
21 strength for labor organizations and giving them full

1 control ^{over} every facet of our lives and I were a delegate
2 in that category, then I would have to vote for
3 Amendment No. 21. But if I were a delegate who was
4 figuring on running for election in the next election
5 and I wanted to garner the votes of labor and said I did
6 something for them without giving consideration to what
7 I might be doing to the draft of the Constitution or
8 the welfare of the people of the State of Maryland, then
9 I might have voted hypocritically for Amendment 21.
10 But had I done so, I would have gone home and prayed for
11 three things:

12 One, that the Lord would forgive me for sin
13 that I committed.

14 Secondly, that no harm would be done to the
15 State of Maryland.

16 And thirdly, that I would garner the votes that
17 I tried to get, and fourthly, that the Delegates of
18 this Convention would rise up and see what they had done and
19 reverse themselves and reconsider and knock out Amendment
20 No. 21.

21 On the other hand, if I were a Delegate

1 to this Convention, earnestly desiring to have a draft
2 of a Constitution which all of the people could live
3 with, which the majority of the people of our State
4 would accept, I would have voted as I did against
5 Amendment 21.

6 Our Committee had this matter before it, we gave
7 extensive hearings to it and we had three choices. We
8 had those who wanted to include in our State Constitution
9 the right-to-work law. If we had included this without
10 any say for labor, then we would have had all the
11 labor organizations against the Constitutional draft.

12 Our Committee wisely decided not to include that
13 in the Constitution. On the other hand, we had labor's
14 bill of rights and proposals before us. If we included
15 that, we knew we were tying the hands of the Legislature,
16 we were crippling this State in its operation, we were
17 crippling the municipalities in its operation and hospitals
18 and many other institutions which should not have this
19 right to organize, collectively bargain and walk out on
20 strike.

21 On the other hand, we had the other choice

1 not to give to the people what they sought and what
2 labor sought. We had the other choice which the majority
3 made, to say nothing in this field. That was our
4 Committee's recommendation. That was until you unwisely,
5 in my opinion, voted in Amendment 21.

6 The effect of Amendment 21, as I mentioned,
7 covers all employees. I asked the question whether
8 it covered all employees and they answered yes. They
9 had no alternative but to answer yes, because the word
10 "employees" is all-inclusive and all-embractive and means
11 employees wherever they may be, State, municipal and
12 subdivisional employees, as well as household and
13 hospital and institutional employees, and so on down
14 the line in areas where you would not want labor
15 organizations walking in and making demands and walking
16 out the next day and striking.

17 I will point out one classic example, what
18 would happen in the State of Maryland if the employees
19 of the Comptroller's Office decided they wanted to have
20 more wages and they were allowed to organize and there
21 were no restrictive legislation?

1 If we put it in the Constitution, the Legislature
2 will be foreclosed, the door will be shut in their face
3 because they can raise the point if any restrictive
4 legislature is placed in it they will be able to say that
5 the Declaration of Rights was acted on unconstitutionally.

6 What happens if the Comptroller's Office goes
7 on strike? Where do you get your checks? Who collects
8 the revenue for the State of Maryland? Who pays all
9 these employees? The Employees' Association that appeared
10 before our Committee wrote letters such as Delegate Kiefer
11 got this morning. They do not want this. They say it
12 would be a big mistake. Those letters were not read, but
13 the sentiment of their organization is as strong as if the
14 letters were read to everyone of you. If you heard these
15 letters, you would not have voted for Amendment 21.

16 Just think what might happen at any of the
17 mental institutions if those employees decided they couldn't
18 get their pay raise out of the Legislature and they couldn't
19 deal with the state official. They could go out on strike.
20 Who is going to feed and keep these poor insane people from
21 starving?

1 My friends, if that ever happened, I know that
2 a lot of you would get down on your knees and pray that
3 the Lord and the rest of us would forgive you for the sin
4 committed this morning.

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1 THE CHAIRMAN: Delegate Weidemeyer, you have
2 left just three minutes, including time for answering
3 questions.

4 DELEGATE WEIDEMEYER: Thank you, Mr. President.
5 I don't want to answer too many questions. I just want to
6 tell them the mistakes they make.

7 I want to say, in summary, you can correct this
8 by adoption of Amendment 22 which I have offered. If you
9 are going to leave this concept in the Constitution and
10 Bill of Rights, then you should at least be fair about it
11 and protect your State and municipalities and leave an
12 exception in there where you do not give them the right to
13 go in as you have afforded under the present Amendment 21
14 to every employee in the State of Maryland.

15 I hope that you do think about what you have
16 done and adopt Amendment 22, in some way clarifying and
17 improving what you have done this morning.

18 THE CHAIRMAN: Are there any questions of the
19 sponsor of the amendment? Delegate Lloyd Taylor.

20 DELEGATE L. TAYLOR: Delegate Weidemeyer --

21 THE CHAIRMAN: Delegate Weidemeyer, do you yield
to a question?

1 DELEGATE WEIDEMEYER: I was trying to yield to
2 a private question while Lloyd Taylor was talking. I
3 will be glad to yield to a question from him.

4 THE CHAIRMAN: Delegate Lloyd Taylor.

5 DELEGATE L. TAYLOR: You stated that if public
6 employees were included under this provision that this
7 would endanger the right of the public.

8 Do you know that in the state of Maryland that
9 most of the state hospitals are organized?

10 THE CHAIRMAN: Delegate Weidemeyer.

11 DELEGATE WEIDEMEYER: If they are organized now,
12 there are certain pieces of legislation that protect the
13 hospital and the state of Maryland. If you put this
14 Constitutional amendment in, 21, as you have done it, you
15 have taken away the right of the legislature to restrict
16 and legislate in those fields and I say that Amendment
17 21 is absolutely unnecessary because the legislature can
18 act in those fields and here you froze it that they cannot
19 act in all of those areas.

20 THE CHAIRMAN: Delegate Taylor.

21 DELEGATE L. TAYLOR: I would like to have you

1 answer this other question.

2 For instance, according to this union paper
3 we have a listing of meetings of various locals at
4 the various state institutions and, of course, we have
5 included the Harvard Tunnel, Western Maryland Tunnel,--

6 THE CHAIRMAN: Delegate Taylor, Delegate
7 Weidemeyer has only 30 seconds left, can you make your
8 question short?

9 DELEGATE L. TAYLOR: Are you aware of this fact,
10 that there are many organizations of unions at the state
11 hospitals and other state institutions?

12 THE CHAIRMAN: Delegate Weidemeyer.

13 DELEGATE WEIDEMEYER: I recognize that they have
14 their associations and organizations but I recognize also
15 that there is no Constitutional prohibition against the
16 legislature making proper legislation to control certain
17 areas and phases of it.

18 What you have done by Amendment 21 is close the
19 door in the face of the legislature so they cannot legis-
20 late and if they do legislate it, it would make it
21 unconstitutional.

1 If you will remember, I asked one of the repre-
2 sentatives from one of the state institutions, supposing
3 the employees of state ^{mental hospitals} would organize and the state could
4 not regulate in those areas and they didn't get what they
5 wanted and they walked out? Who would take care of those
6 mental patients? Who would feed them? Would they starve?

7 THE CHAIRMAN: Delegate Weidemeyer, your time
8 has expired.

9 Delegate Taylor.

10 DELEGATE L. TAYLOR: Delegate Weidemeyer didn't
11 answer my main question that I was trying to get out.

12 At the present time we have in the state of
13 Maryland various unions--

14 THE CHAIRMAN: To whom is this question
15 addressed?

16 DELEGATE TAYLOR: This question is addressed to
17 the Chair.

18 THE CHAIRMAN: State the inquiry.

19 DELEGATE L. TAYLOR: We have unions located at
20 Springfield Hospital, Baltimore City Police Department,
21 Montgomery County city departments.

1 If Delegate Weidemeyer's amendment is adopted
2 would it prevent these particular groups from their
3 activities at these state institutions?

4 THE CHAIRMAN: Delegate Taylor, the Chair has
5 real hesitancy in even attempting to answer that question
6 the way you put it, because I am afraid any answer I
7 gave would be misleading to you.

8 I would answer it with a simple No, but that
9 may be misleading to you. I don't think it is the kind
10 of question that you should address to the Chair.

11 Delegate Taylor.

12 DELEGATE TAYLOR: At the present time we have
13 union organizations representing state employees
14 and Delegate Weidemeyer's amendment would prevent the
15 state employees from being organized and this is what I
16 asked the question about.

17 THE CHAIRMAN: I don't think, as the Chair
18 understands the amendment and the explanation that the
19 amendment as it is drawn with the article that is added,
20 that it would bar anybody from doing anything.

21 I would answer you with a short No. I

1 think it simply -- the effect of it, as the Chair under-
2 stands it at least, would be to take away from the class
3 of employees mentioned in the amendment that was adopted--
4 I mean the amendment that is before you, Amendment 22,
5 the right that is granted in the amendment adopted but it
6 does not bar them from acting to organize or to be repre-
7 sented.

8 At least that is the Chair's understanding.
9 Any delegate desire to speak in favor of the amendment?

10 Delegate Vecera.

11 DELEGATE VECERA: No, Mr. Chairman. I just
12 want to amplify a point.

13 THE CHAIRMAN: I want to find out if any dele-
14 gate desires to speak in favor?

15 If not, the Chair recognizes Delegate Vecera
16 to speak in opposition.

17 DELEGATE VECERA: Mr. Chairman, I want to ask
18 Delegate Weidemeyer a question on this point. That was
19 on line 7, I think he intended this --

20 THE CHAIRMAN: Just a second. He doesn't have
21 the floor.

1 Delegates desiring to debate have priority over
2 delegates desiring to ask questions. Any delegate desire
3 to speak in opposition?

4 Delegate Vecera.

5 DELEGATE VECERA: I am debating it.

6 On line 7; what Delegate Weidemeyer is intending
7 to do, I think he is making the scope wider by saying
8 "those indirectly employed under contract". That would
9 take in a wider scope. He wants to do away with all the
10 private as well as state employees.

11 I think he did not intend that and perhaps he
12 might want to modify that section, Mr. President.

13 THE CHAIRMAN: Any other delegate desire to
14 speak in favor of the amendment?

15 Do you desire to speak in favor of the amend-
16 ment, Delegate Mitchell?

17 DELEGATE MITCHELL: No.

18 THE CHAIRMAN: Any delegate desire to speak in
19 favor?

20 Any delegate desire to speak in opposition?

21 Delegate White.

1 DELEGATE WHITE: Mr. Chairman, and members of
2 the Convention, I have listened very carefully to the
3 presentations which have been made this morning. I have
4 listened intently to the remarks which are made by my
5 delegate friend to my right and, no doubt, if I had had
6 his same experiences I would share his fears of what might
7 occur if we sustained the vote which was taken this morning
8 by the majority.

9 I can see where he stands but, Mr. Chairman,
10 America has come a long way in the area of employee
11 management relations since the 1930's. It was in the
12 1930's that the Wagner Act was passed which extended to
13 employees in America the right to organize under
14 certain conditions and to choose their own representatives
15 for the purposes of collective bargaining.

16 But this great act did not cover Federal em-
17 ployees. It was some years later that executive order
18 10988 was issued by the President of the United States
19 which authorized Federal employees to organize and to
20 bargain collectively and to sign contracts.

21 It would seem to me that the fear that municipal

1 employees and employees in other governmental units, that
2 there is no reason to fear that these employees if permit-
3 ted to organize would not conduct themselves in the same
4 responsible manner which their brothers and sisters have
5 at the present level.

6 The President of the United States took another
7 great step when he issued an executive order, President
8 John F. Kennedy, to apply equal employment opportunity for
9 females and of course we have retreated from that at the
10 present time.

11 Yesterday, Mr. President and members of this
12 Convention, on the way back to Baltimore, I listened to
13 that great President of the United States and he stated
14 in part in an appearance before a labor Convention that
15 labor and management are the same as two fingers on a
16 hand, in fact what they do is mutually compatible.

17 Mr. President, I suggest that we should vote
18 down this amendment and give employees in local units of
19 government in Maryland an oppojtunity to organize and
20 select their own representative because it is only with
21 their own chosen and selected representative that workers

1 can deal on a basis of equality with members of manage-
2 ment and I ask you to vote down this proposal.

3 THE CHAIRMAN: Any other delegate desire to
4 speak in favor of the amendment?

5 Delegate Bothe.

6 DELEGATE BOTHE: Mr. Chairman, I rise to speak
7 against the amendment. I do not intend to amplify the
8 discussion made this morning.

9 I think the purpose of the amendment was very
10 obviously to permit the moving delegate to make a ten-
11 minute instead of a three-minute speech on the subject, but
12 I would like to correct or speak to the resopnse that
13 the Chair gave to a question asked by Delegate Taylor,
14 because on reading Amerdment 21 in conjunction with
15 Amendment 22, it would seem to me that the intent of Amend-
16 ment 22 is very clearly to deny to people in public employ-
17 ment the right to organize and bargain collectively.

18 They have exercised not the right so much as the
19 ability to organize and bargain collectively up to this
20 time. The purpose of Amendment 21 is to guarantee that
21 right in the Constitution which this body has chosen to

1 do.

2 If Amendment 22 were accepted, it would seem
3 to me little question but that not only were public
4 employees excepted but they were Constitutionally banned
5 from organizing and bargaining collectively and, for
6 that reason, among many others, I emphatically urge this
7 committee to reject Amendment 22.

8 THE CHAIRMAN: Any other delegate desire to speak
9 in favor of the amendment?

10 The Chair recognizes Delegate Scanlan to
11 speak in opposition.

12 DELEGATE SCANLAN: As one of the 37 who voted
13 against Amendment Number 21, I guess I am in the words of
14 Delegate Weidemeyer, without sin, but, nevertheless, now
15 that that has been done, I think it very unwise to en-
16 cumber the Constitution further with another unnecessary
17 provision.

18 As I understand his major concern, it would be
19 to fear that as a result of the adoption of Amendment 21,
20 the legislature of this state could not restrict the
21 right to strike under certain conditions, on the part of

1 governmental employees, I don't believe that Amendment
2 21 reaches that subject.

3 I don't believe that there is anything in
4 Amendment 21 which would prohibit the legislature of this
5 stateto enact restrictions on the right tostrike on the
6 part of governmental employees.

7 I believe in the words of Delegate Sickles that
8 in enacting Amendment 21, you did a very small but per-
9 haps necessary thing.

10 I also disagree with Delegate Bothe's mis-
11 construction of the comments of the Chair in response to
12 a question put by Delegate Taylor.

13 As I understand Delegate Weidemeyer's amend-
14 ment, even if adopted, it would not, at least in my
15 opinion, it would not bar unions on the part of govern-
16 mental employees. It would not give them the right to
17 organize there the same Constitutional statutes that
18 you have prescribed in Amendment Number 21.

19 I hope that the amendment is defeated but
20 if it is not defeated, I hope that intent would carry
21 over. I think this is a perfect example of what

1 happens when you start to encumber the Constitution with
2 statutory provisions.

3 The temptation is irresistible to add the
4 various exceptions, addendums and so forth, and I think
5 that is what is represented here by Amendment Number 22.
6 I think if we are going to raise the right to organize
7 and bargain collectively to Constitutional status it
8 should be given to all employees of this state whether
9 they work for state government or not.

10 There may be those that disagree with me, I
11 read nothing in Amendment 21 which would deny the legis-
12 lature of this state the right to put restrictions on the
13 right to strike on the part of government employees.

14 The horrible example of the teacher's strike
15 in New York with a minor version of it in Baltimore, cer-
16 tainly attested to the wisdom to leave in the legislature
17 the power to protect the state on the right to put re-
18 strictions on their employees in the few instances that
19 restrictions should be placed on them.

20 THE CHAIRMAN: Delegate Mitchell, do you desire
21 to speak?

1 DELEGATE MITCHELL: No, Delegate Bothe said what
2 I wanted to say.

3 THE CHAIRMAN: All right.

4 Are you ready for the question? The question
5 arises on the adoption of Amendment 22. The Clerk will
6 ring the quorum bell.

7 The question arises on the adoption of
8 Amendment 22. A vote Aye is a vote in favor of the
9 amendment; a vote No is a vote against.

10 Cast your votes.

11 Has every delegate voted? Does any delegate
12 desire to change his vote? The Clerk will record the
13 vote.

14 There being 16 votes in the affirmative and
15 108 in the negative, the motion is lost and the amend-
16 ment is rejected.

17 Delegate James, is your amendment printed?

18 Pages will distribute Amendment AO. This will
19 be Amendment Number 23.

20 The Clerk will read the amendment.

21 MR. QUILLEN: Amendment Number 23 to Committee

1 Recommendation Number R&P-1, by Delegates James, and
2 J. Clark.

3 On page 4 Section ____ Right to Organize and
4 Bargain collectively as amended by Amendment Number 21
5 in line 10 of the amendment after the word "choosing" add
6 the following words:

7 ",subject to such regulations as the General
8 Assembly may prescribe by law."

9 THE CHAIRMAN: The amendment having been pro-
10 posed by Delegate James and seconded by Delegate James
11 Clark, the Chair recognizes Delegate James.

12 DELEGATE JAMES: Mr. Chairman and fellow dele -
13 gates, first let me say that this amendment is offered
14 in full acceptance of the decision of the majority here
15 that the right of collective bargaining be recognized as
16 a Constitutional right and that this amendment is not
17 offered in any sense to diminish or to erode the Consti-
18 tutional right of collective bargaining.

19 Nevertheless, there are some problems in
20 connection with the bald statement of the language
21 adopted by the committee of the Whole.

1 The language is "the employees shall have the
2 right to organize and bargain collectively through
3 representatives of their own choosing."

4 Now, from the standpoint of the state of Mary-
5 land, especially, and I am directing my attention to that
6 particularly, what does this mean? Does this mean that
7 any group of state employees can insist upon bargaining,
8 no matter how small that unit?

9 Suppose the Welfare Department workers decided
10 to create the union to bargain with the state. Suppose
11 the employees of the state of Maryland do this, suppose
12 the institutional workers, the custodial workers at the
13 mental and penal institutions decide to create a union.

14 Should not the state have the right to decide
15 how far this recognition should go, whether it should be
16 a recognition of a union of the industrial type, shall we
17 say, which will include all the state employees or
18 should not the state have a right to say?

19 Now, this would not be fair, we should to
20 some extent recognize the craft idea and that those
21 people who are in specialized areas such as those in the

1 custodial institutions should have the right to a separate
2 union.

3 There are all sorts of things here that should
4 be devolved by an appropriate statute and this would
5 give the state the procedural power to say that this
6 right may be exercised in an orderly manner.

7 In a private sector I can see that the state
8 should also have the same power that is exercised
9 by the Federal government in adjusting labor relations in
10 full recognition of the power of collective bargaining, we
11 submit this is a serious amendment, not with the intention
12 of eroding the original language but simply with the
13 intention of recognizing that the legislature can exer-
14 cise -- can lay down rules and regulations for a reason-
15 able exercise of the right.

16 THE CHAIRMAN: Any questions of the sponsor
17 of the amendment?

18 Delegate Beatrice Miller.

19 DELEGATE B. MILLER: Delegate James, do you
20 yield to a question?

21 THE CHAIRMAN: Delegate James.

1 DELEGATE JAMES: Yes.

2 THE CHAIRMAN: Delegate Beatrice Miller.

3 DELEGATE B. MILLER: The explanation that
4 Senator James gives is partially acceptable but I am
5 very worried whether the explanation of intent is
6 different from in fact what this resolution proposes and
7 I wonder if he would accept a modification or a change
8 in his wording, something to the effect that the right
9 to collective bargaining and organization is recognized
10 and that the General Assembly may pass such regulations as
11 it sees fit?

12 THE CHAIRMAN: Delegate James.

13 DELEGATE JAMES: I hope that the language did
14 this. Now, if better language can be adopted, we would
15 be willing to accept it.

16 First you announce in the first sentence that the
17 employees shall have the right to bargain collectively
18 through representatives of their own choosing.

19 That is a bald right which is very clear. The
20 situation would be subject to such regulations as the
21 General Assembly may prescribe by law. That would mean as

1 I interpret it, that the legislature would have a right
2 to say in a procedural way, how this right should be
3 exercised, almost like the ownership of land.

4 You have the right to own land but the legislature
5 certainly has the right to decide the use of it.

6 THE CHAIRMAN: I think I know what Delegate
7 Miller was driving at. Let me see if this would carry
8 out your suggestion; if before the word in line 7, Dele-
9 gate Miller, you inserted the words "and the exercise of
10 such right", and then went on, would that be the point
11 that you are making?

12 DELEGATE JAMES: Yes.

13 THE CHAIRMAN: Delegate Miller?

14 DELEGATE MILLER: Mr. Chairman, I think at
15 this point I would agree with Delegate Scanlan. I don't
16 think that there is anything in what we did this
17 morning which would preclude the General Assembly from
18 acting.

19 I don't know why we have to say it here. We
20 have not said it in any other rights that we have adopted
21 in the bill of rights. We do not assume that the General

1 Assembly doesn't have the right to act in the other cases.
2 I would assume the same thing would be true here. I
3 think we are attempting to legislate on the floor and
4 I would suggest--

5 THE CHAIRMAN: Very well.

6 DELEGATE JAMES: I would like to press for the
7 modification. I think this is quite a bit different from
8 any of the other proposals we have had for inclusion in
9 the bill of rights. This is a grant to the people of the
10 state of a right to collective bargaining.

11 Certainly this right should recognize the
12 reasonable exercise thereof through legislative control
13 and without a legislative control, I can see that the
14 right might become meaningless.

15 THE CHAIRMAN: Delegate Bothe, do you have a
16 question?

17 DELEGATE BOTHE: Yes.

18 THE CHAIRMAN: Delegate James, do you yield to
19 another question?

20 DELEGATE JAMES: Yes.

21 THE CHAIRMAN: Delegate Bothe.

1 DELEGATE BOTHE: By your amendment, Delegate
2 James, it is apparent that you are not satisfied with the
3 responses which I gave this morning to the Chair and the
4 various delegates on the subject of whether the General
5 Assembly would be able to write implementing legislation
6 to go with this statement of principle in the Constitution.

7 THE CHAIRMAN: Is that a question?

8 DELEGATE BOTHE: Yes, it is a question.

9 The question is simply this: are you not satis-
10 fied that the General Assembly would be able to write
11 implementing legislation?

12 THE CHAIRMAN: Delegate James.

13 DELEGATE JAMES: I am satisfied with your
14 explanation but an explanation which might prove to be
15 futile in the face of flat Constitutional language which
16 says that employees shall be entitled to collective bar-
17 gaining by agents of their own choosing and it is very
18 conceivable, this is a problem in labor relations all the
19 time, where you have craft unions within an industrial
20 union, and they feel that the industrial union, the big
21 union is not really representing their interest properly

1 and they could well argue that their interests should be
2 represented by a smaller union.

3 Now, this fractionalization could go to the
4 point where it would be ridiculous and I feel very
5 strongly that the language of the section would give
6 the smaller groups that right, in spite of your explana-
7 tion.

8 THE CHAIRMAN: Delegate Bothe, do you have a
9 further question?

10 DELEGATE BOTHE: Delegate James, I wonder if
11 you would be willing to accept a substitution for the
12 language you used in Amendment 23, language which has
13 frequently been used in conjunction with such provisions,
14 substantially as follows: that the legislature shall
15 implement this section?

16 THE CHAIRMAN: Delegate James.

17 DELEGATE JAMES: I think that would be accept-
18 able, some recognition of legislative power to implement
19 it.

20 THE CHAIRMAN: Delegate Bothe?

21 Do you have a further question?

1 DELEGATE BOTHE: I would then ask Delegate James
2 if he would be willing to accept the substitution?

3 THE CHAIRMAN: Delegate James.

4 DELEGATE JAMES: Let me confer with me co-
5 sponsor.

6 THE CHAIRMAN: Delegate James.

7 DELEGATE JAMES: Mr. Chairman, after further
8 considering it, I think there is a difference in that im-
9 plementation probably means and is subject to the interpre-
10 tation that the legislature could really do something in
11 furtherance of the right of representation so that it would
12 not really get at the thing that I am talking about, to
13 wit, fractionalization of unions within the straight
14 structure.

15 Now, I am not saying it should necessarily be
16 one big union because this might very well be
17 unfair to certain areas but it seems to me that the
18 governor and the legislature should have the power to
19 recognize either all the state employees in one large
20 union or to say that there should be a special type of
21 representation in certain specified areas for fractional

1 parts of the state organization.

2 I think it would be clearer if we stuck to the
3 original language.

4 THE CHAIRMAN: Any further questions of the
5 sponsor of the amendment?

6 Delegate Sickles.

7 DELEGATE SICKLES: Delegate James--

8 THE CHAIRMAN: Delegate James has only one
9 minute remaining.

10 DELEGATE SICKLES: Delegate James, I think the
11 legislative history is sufficiently clear not to include
12 this language because when I started off the questioning
13 of Delegate Bothe, I pretty much established the fact
14 that the legislature would have the authority to modify
15 this right, the duty to bargain normally will involve
16 appropriate bargaining units, the method of determining
17 the majority and the right.

18 The concept in 21 doesn't go that far. It is
19 merely the right to organize.

20 THE CHAIRMAN: What is the question?

21 DELEGATE SICKLES: To improve your amendment,

1 you talk in terms of procedural activities and regula-
2 tions. Would you agree to include the word procedural
3 before the word regulations, if that is your intent?

4 THE CHAIRMAN: Delegate James.

5 DELEGATE JAMES: I don't believe that is satis-
6 factory with either me or my co-sponsor, although I think
7 to a large extent the amendment is designed to handle
8 the procedural aspects of the thing.

9 But I don't believe the word "procedural"
10 would encompass a substantive matter of exactly which unions
11 the state would recognize in conforming to this Consti-
12 tutional adjunctive.

13 I think the state ought to have the basic power
14 to do this. Now, carrying it over to the private sector,
15 the state, I think, even in the private sector should
16 have the right such as I believe you have in the Federal
17 law to -- and this is done without any Constitutional
18 provision to law down rules and regulations under which
19 unions will be recognized after taking appropriate votes.
20 This should be a flexible matter handled at the
21 legislative level.

1 Now, once you have achieved the Constitutional
2 right and this is a recognition of it in the Constitution,
3 it seems to me that it is a small concession to say that
4 the legislature can adjust the right, can adjust it.

5 THE CHAIRMAN: Does any delegate want to
6 speak in opposition?

7 Delegate Scanlan.

8 DELEGATE SCANLAN: I must oppose it. The
9 necessity for it emphasizes the lack of wisdom in
10 enacted Amendment 21. You have cast into the Constitution
11 the right to organize, a right which has always been
12 statutory; take the right to bargain collectively in the
13 Wagner Act.

14 It is a fundamental statutory right, but
15 since it was in the statute and not the Constitution,
16 the Congress was not precluded in the Taft Hartly Act
17 and some others that have followed in laying down restric-
18 tions upon carrying that right to the enth power.

19 Unlike freedom of assembly, freedom of religion,
20 the right to bargain collectively must be limited in
21 some respects and on many occasions. Delegate Sickles

1 has alluded to some and Delegate James in others.

2 The danger is by enacted Amendment 21 it might
3 be argued that we have stripped the plenary power of the
4 legislature in this field completely. I accept
5 Delegate Bothe's explanation that that was not the inten-
6 tion of Amendment 21 and Delegate Sickles' representations
7 to the same effect.

8 In other words, in my opinion by Adopting
9 Amendment 21 while we have granted the right to organize
10 and bargain collectively on a Constitutional basis,
11 taken it out of the statutes and elevated it to the
12 Constitution, we have not, however, stripped the General
13 Assembly of the power to make reasonable regulations and
14 implementing or restricting in some instances the full
15 exercise of that right, provided that the basic right to
16 bargain and organize collectively is proposed.

17 For example, can the legislature enact a statute
18 saying once an election is held and the employees have
19 elected their bargaining representative that the results
20 of that election have to stay in effect at least two
21 years?

1 Or would Amendment 21 mean any time the em-
2 ployees wanted a new election to choose a new bargaining
3 agent they would be entitled to do so?

4 I certainly hope Amendment 21 is interpreted
5 reasonably to preserve in the General Assembly the full
6 power to implement and regulate the right granted. On
7 that basis, I will accept Amendment 21 that this body has
8 seen fit to enact and on that basis oppose Amendment 23
9 as being unnecessary.

10 THE CHAIRMAN: Delegate Henderson, do you
11 desire to speak in favor of the amendment?

12 DELEGATE HENDERSON: I do, yes.

13 THE CHAIRMAN: You may proceed.

14 DELEGATE HENDERSON: IF I may comment on
15 Delegate Scanlan's argument, which is in substance, although
16 he recognizes the difficulty of adopting Article 21 with-
17 out limitation which this amendment seeks to put upon
18 it, he chooses to rely upon the statement of the sponsors
19 of 21 as to what their intention was in recommending it.

20 Now, that is all very well as far as an act
21 of the legislature is concerned. Even there the courts

1 con't always follow up what the draftsmen and what the
2 legislatures say they intend, but when you come to a
3 Constitutional Convention which is brought before the
4 people, it seems very likely to me, and I could cite
5 many cases to prove the point, that what the courts say
6 is that regardless of what the sponsors intended, the
7 people have voted on this thing and the people are governed
8 by the plain meaning of the English language, the words,
9 in other words, and not the gloss put upon them.

10 So I think we are leaning on a broken reed
11 when we try to confine the courts to what the people say
12 on this floor about what the intention was.

13 I would greatly prefer to see this spelled out
14 in the Constitution. It is a new Constitutional right
15 which never existed before and if we adopt it, we
16 should put the proper limitations on it to make it regula-
17 ted by the legislature.

18 THE CHAIRMAN: Any other delegate desire to
19 speak in opposition?

20 Delegate Koger.

21 DELEGATE KOGER: Mr. Chairman and ladies and

1 gentlemen, I would like to oppose this amendment. I am
2 an insurance man and we have what is known as an inde-
3 pendent agent's association.

4 THE CHAIRMAN: Will you pick up another micro-
5 phone?

6 DELEGATE KOGER: I am a member of the Independent
7 Agent's Association of Maryland, of Baltimore City, and
8 we are not regulated by the legislature. The Bar ASso-
9 ciation is an organization of lawyers and they are not
10 regulated by the legislature and I don't believe, to
11 give away your controls or to let out -- or to give away
12 the state employees right to organize and bargain and then
13 turn out and give out the regulation and control of it
14 to anyone would be of any value to the people who are
15 trying to organize and regulate themselves.

16 Therefore, I would be opposed to it like I
17 would be opposed to any organization who would be
18 trying to develop themselves by trying to organize.

19 I don't think anyone should have someone else
20 to regulate them.

21 THE CHAIRMAN: Anyone desire to speak in

1 opposition?

2 Delegate Kiefer?

3 DELEGATE KIEFER: I am glad to find myself in
4 favor of something and on the same side as Delegate
5 Henderson.

6 This can be regulated by the General Assembly
7 but unlike Delegate Scanlan, I am not so sure that these
8 weighty words of wisdom we are saying here will carry
9 too far.

10 I hope we don't feel like the flies riding across
11 the prairie on the bull's horn. My, what a big dust we
12 make.

13 I speak in favor of this.

14 DELEGATE MILLER. I rise to speak in opposition.

15 THE CHAIRMAN: Delegate Miller.

16 DELEGATE MILLER: I think the cat was out of
17 the bag when Delegate James said this was procedural
18 matter but then refused to adopt the word "procedural".

19 The state of New York and New Jersey both have
20 this identical wording in the Constitution. In neither
21 case has it precluded the General Assembly from acting.

1 I would give you further: it is true that the state of
2 New York has enacted a very bad bill as far as labor
3 is concerned, a terifficly bad bill known as the
4 Rockefeller - Travia Act. It was done under the
5 similar wording of what we passed today under Article 21.
6 I do not think we did anything that great. I don't think
7 we did anything less clear than what we did in any other
8 article that w have thus far adopted.

9 I would argue with those people that say
10 freedom of speech is not limited. We do limit it in various
11 ways by act of the General Assembly. I know the General
12 Assembly can regulate this as it has regulated everything
13 else, and I do not think that this amendment says what
14 it purports to say, and I would urge everyone to vote
15 against it.

16 THE CHAIRMAN: Does any other delegate desire
17 to speak in favor of the amendment?

18 Delegate Maurer?

19 DELEGATE MAURER: Mr. Chairman, I would speak
20 for an amendment which did have the word "procedural" in
21 it. My problem with the amendment was just this: for

1 25 years or more we have developed statutes and laws and
2 interpretations dealing with private industry, with the
3 private sector, all at once we are moving into the public
4 sector.

5 We don't have the kind of terminology, accepted
6 terminology to determine what is a negotiated unit for
7 example, we are moving into areas of professional employ-
8 ees and this is precisely what troubled me, that for an
9 interim period, at any rate until such techniques and
10 terminology are developed, we may have a more difficult
11 time and I would, without wishing to in any way erode
12 the right to organize on either the part of private or
13 public employees, I do think we have to think of making
14 sure that we can develop the procedures to carry this
15 out in an orderly fashion.

16 THE CHAIRMAN: Any other delegate desire to
17 speak in opposition to the amendment?

18 (Cries of "Question".)

19 THE CHAIRMAN: Delegate Harry Taylor.

20 DELEGATE H. TAYLOR: Mr. Chairman, Delegate
21 Lloyd Taylor was going to speak against this amendment,

1 and I was going to speak for it, but we have agreed
2 between ourselves not to say anything. (Laughter.)

3 (Cries of "Question".)

4 THE CHAIRMAN: Delegate Key.

5 DELEGATE KEY: I have a question that I would
6 like to ask Delegate James.

7 THE CHAIRMAN: Delegate James, will you take the
8 floor to yield to a question?

9 DELEGATE JAMES: I will be glad to.

10 THE CHAIRMAN: Delegate Key.

11 DELEGATE KEY: As you spoke giving your
12 reasons why you did not want to include the word "imple-
13 mentation", I was lost, because it seemed there for a
14 while you were becoming the employer in your regulatory
15 laws. When you get into the area of who shall decide who
16 best represents the employee, I wonder if you are not get-
17 ting into this area, and if the legislature should have
18 this right.

19 THE CHAIRMAN: Delegate James.

20 DELEGATE JAMES: My intention was certainly
21 designed to give the state as an employer some degree of

1 control with whom it shall bargain.

2 The state's position is just a little bit dif-
3 ferent from that of a private employer and this provision
4 would provide the necessary flexibility. In other words,
5 in the state government, you have policies set by repre-
6 sentatives of all the people, so it is their job and duty
7 in laying down policies in connection with state employ-
8 ment to take care of the affairs of all the people to
9 bargain if this is accepted in a reasonable manner and to
10 lay down rules and regulations with whom to bargain, the
11 entire body of state employees or possibly segments
12 thereof, but that is quite a bit different from the em-
13 ployer in a private sector bargaining because there the
14 employees really decide how they are going to bargain
15 basically and the state is not in the picture as an employ-
16 er.

17 THE CHAIRMAN: Any further question, Delegate
18 Key?

19 DELEGATE KEY: Yes.

20 THE CHAIRMAN: Delegate Key.

21 DELEGATE KEY: Are you saying that the rights

1 of state's employees should be less than those of private
2 employees?

3 THE CHAIRMAN: Delegate James.

4 DELEGATE JAMES: I think so. I think when you
5 are working for the state, you are working for all the
6 people and it is quite a bit different working for the
7 state than it is working for a private employer.

8 The important thing is that the employer in the
9 instance of the state is controlled by the representatives
10 of all the people and that is quite a bit different from
11 a private employer who just represents himself or the
12 stockholders.

13 THE CHAIRMAN: Any further question, Delegate
14 Key?

15 DELEGATE KEY: I don't wish to debate the issue.

16 THE CHAIRMAN: Very well. Delegate James,
17 do you have a further comment?

18 DELEGATE JAMES: Yes, I would like to direct a
19 further answer to Delegate Sickles.

20 After further consideration, Delegate Sickles,
21 of the concept and the meaning and the application of

1 the word "procedural", my co-sponsor and I would be willing
2 to accept the word "procedural" inserted before the word
3 "regulations" so if there is no objection--

4 THE CHAIRMAN: Is there any objection to modifi-
5 cation of the amendment by inserting in line 7 the word
6 "procedural" before the word regulations?

7 The Chair hears none. The amendment will be so
8 modified.

9 THE CHAIRMAN: For what purpose does Delegate
10 Dukes rise?

11 DELEGATE DUKES: I would like to direct a ques-
12 tion to Delegate James.

13 THE CHAIRMAN: Does Delegate James take the
14 floor to yield to a question?

15 DELEGATE JAMES: Yes.

16 THE CHAIRMAN: Delegate Dukes.

17 DELEGATE DUKES: Now that the amendment has been
18 modified, I don't know what it means. What does "pro-
19 cedural" mean?

20 THE CHAIRMAN: Delegate James.

21 DELEGATE JAMES: I believe you are a lawyer

1 and you know just about as much of what "procedural" means
2 as I do. I would think it would go to the question of
3 how elections would be determined, how long the validity
4 of the election would stand, eligibility of employees,
5 fairness of elections, conceivably the unit with whom the
6 state would bargain.

7 THE CHAIRMAN: Delegate Dukes.

8 DELEGATE DUKES: That is all you intended to
9 cover by your amendment?

10 THE CHAIRMAN: Delegate James.

11 DELEGATE JAMES: Yes.

12 THE CHAIRMAN: Any further questions? Any
13 further discussion?

14 Delegate Ritter.

15 DELEGATE RITTER: I would like to ask Senator
16 James -- that last statement he made, the element of who
17 the state shall bargain with.

18 THE CHAIRMAN: I think you misunderstood him.
19 He said the unit, not state.

20 DELEGATE RITTER: All right, the unit that the
21 state shall bargain with.

1 THE CHAIRMAN: Delegate James, will you repeat
2 what you said?

3 DELEGATE JAMES: I think I said the unit with
4 which the state would bargain, yes.

5 THE CHAIRMAN: Very well.

6 Delegate Ritter.

7 DELEGATE RITTER: Would not that take all the
8 sails out of the first amendment we put on, 21?

9 THE CHAIRMAN: Delegate James.

10 DELEGATE JAMES: I don't think so.

11 THE CHAIRMAN: Do you have a further question,
12 Delegate Ritter?

13 DELEGATE RITTER: Well, I have to disagree with
14 the honorable senator, because I believe those employees
15 shall have the right to bargain collectively and have
16 representatives of their own choosing, I think they are the
17 ones who would decide who would have the vote.

18 I am in favor of the amendment but that last
19 statement I am a little bit afraid of.

20 THE CHAIRMAN: Delegate Ritter, the Chair is
21 completely confused as to your question, I am not sure

1 that I understand either your question or Delegate James'
2 answer to it.

3 As I understood his answer to Delegate Dukes,
4 and Delegate James, will you correct me if I didn't
5 understand it properly, he ended his comment by saying it
6 may possibly include the right of the legislature to
7 designate the unit within which the collective bargaining
8 should operate or words to this effect.

9 Was this substantially what you said?

10 DELEGATE JAMES: That is substantially what I
11 meant. Certainly you have to accept this word "procedural"
12 in context with the basic right set forth of collective
13 bargaining.

14 Now, the State certainly couldn't do anything
15 to impair this right of collective bargaining and this
16 amendment is not in any way intended to do that, but,
17 certainly the manner and means and the procedures through
18 which this collective bargaining process is going to be
19 exercised should be subjected to some state regulation so
20 that it will be meaningful and effective and in the interest
21 of the public and employees.

1 That is my intention.

2 THE CHAIRMAN: Do you have a further question,
3 Delegate Ritter?

4 DELEGATE RITTER: No, I have no further question.

5 THE CHAIRMAN: For what purpose does Delegate
6 Sickles rise?

7 DELEGATE SICKLES: Am I allowed to speak against
8 the amendment?

9 THE CHAIRMAN: You certainly are.

10 DELEGATE SICKLES: I feel a little like the
11 time when we were back in the House of Delegates and the
12 committee reported out a bill unfavorable with amendments.
13 We weren't really for it but if it passed, we wanted to
14 be sure it was amended properly.

15 That is how I feel about this. By putting the
16 word "procedural" in there, it helps the language. I
17 think there is a feeling that what we have done by 21 is
18 a lot broader than I intended or even the sponsors in-
19 tended that it be, but if that is the intention of some
20 of those maybe it is a better amendment than I thought.

21 But even in its limitations, it seems to me

1 that it is clearly understood by legislative history
2 which some people question that if you were going to go
3 further that you would have to have legislation to
4 set up appropriate bargaining units as far as elections are
5 concerned.

6 If there is concern about legislative history
7 then there should be concern about this legislative
8 history, if a court would read this and not having the
9 benefit of this colloquy, and therefore, I would be op-
10 posed to this amendment.

11 THE CHAIRMAN: Anybody desire to speak in favor
12 of the amendment?

13 Delegate Malkus?

14 DELEGATE MALKUS: Mr. President, I do not know
15 whether I am speaking in favor or against the amendment.
16 I am disappointed that the president of the Maryland
17 Senate accepted that amendment.

18 I too, like Delegate Dukes, do not know what
19 it does. I supported and in my heart I thought I was
20 right, the Amendment Number 21 which gives people the right
21 to organize.

1 Since then, I do not know whether I did right
2 or not. And the question that I raised before this body:
3 does this give the people or organizations or unions the
4 right to strike against the state of Maryland.

5 And the amendment is being drawn, and I hope we
6 can talk long enough for the amendment to be prepared
7 that no one can strike against the state of Maryland.

8 Now, I am very strong in my feeling that people
9 should have the right to organize. My record here in
10 the legislature has always been the same, but I am
11 bitterly opposed to those who struck at the docks when we
12 were getting ready to go overseas to fight for our country
13 and defy anyone here to say they were right in doing so.

14 Now, getting back to home, Mr. President, I
15 would be bitterly opposed to anybody who would strike
16 at a state hospital and that is the one thing before
17 we stop talking, I want it clearly written in this Con-
18 stitution that you can't strike against the state of
19 Maryland and let some poor inmate die because of some
20 labor dispute we have going.

21 Now, my friend brother Sickles said over here

1 said that can't be. But I now know that he will support
2 the amendment when I bring it up in a couple of minutes.

3 Now, this is a serious thing, what we are doing
4 here.

5 THE CHAIRMAN: You have one-half minute, delegate
6 Malkus.

7 DELEGATE MALKUS: Thank you.

8 We also have a serious thing not to protect
9 labor or management, we also have a primary period of
10 performance to protect the people. And I want it written
11 up that we cannot strike against somebody who is laying
12 in the hospital and dying or any other state agency.

13 Now, I don't know where we are, I would like
14 to have the matter further discussed. I would rather have
15 it clarified, and I am having the amendment prepared that
16 we can't strike against the state.

17 THE CHAIRMAN: Your time has expired, Delegate
18 Malkus.

19 Any other delegate desire to speak in opposition
20 to the amendment?

21 (Cries of "Question".)

1 THE CHAIRMAN: Are you ready for the question?

2 The question arises on a consideration of
3 Amendment 23.

4 The Clerk will ring the quorum bell.

5 The question arises on a consideration of
6 Amendment Number 23. A vote Aye is a vote in favor of the
7 amendment; a vote No is a vote against. Cast your votes.

8 Has every delegate voted? Does any delegate
9 desire to change his vote?

10 The Clerk will record the vote.

11 There being 70 votes in the affirmative and 55
12 in the negative, the motion is carried and the amendment
13 is adopted.

14 THE CHAIRMAN: Delegate James.

15 DELEGATE JAMES: I rise to a point of personal
16 privilege.

17 THE CHAIRMAN: State the privilege.

18 DELEGATE JAMES: I would like to recognize in
19 the gallery, Mr. William Whiteford, Director of Administra-
20 tion in Harford County. We are happy to have him with
21 us. (Applause.)

1 THE CHAIRMAN: Delegate Adkins.

2 DELEGATE ADKINS: May I, sir, on a point of
3 personal privilege, ask the delegates to welcome Mr. and
4 Mrs. Thomas E. Irving of Salisbury; he is the distinguished
5 publisher of the Daily News. It is the
6 Eastern Shore's largest, and to many of us, at least,
7 finest newspaper. (Applause.)

8 THE CHAIRMAN: Delegate Macdonald, do you wish
9 to offer Amendment AN?

10 DELEGATE MACDONALD: Mr. Chairman, I am a little
11 bit disturbed by the amount of time we are spending
12 on this amendment and I desire to withdraw the amendment.
13 (Applause.)

14 THE CHAIRMAN: Delegate Hofsetter, do you wish
15 to offer your amendment?

16 DELEGATE HOSTETTER: I then, too, desire to
17 withdraw mine. (Applause.)

18 THE CHAIRMAN: Are there any other amendments to
19 the section added by Amendment 21 other than the one
20 mentioned by Delegate Malkus?

21 Delegate Weidemeyer.

1 DELEGATE WEIDEMEYER: Mr. President, I rise to
2 a point of personal privilege. It is a very happy day of
3 when
4 my life to find that/Delegates Koger and Kosakowski and I
5 agree on one issue that we have the approbation of the
6 Evening Sun, because in a little editorial on December 13
7 in commenting on our stand to prohibit any of the state
8 lotteries, "Presumably the busy convention delegates could
9 now reopen the lottery section and plug the hole to which
10 the commission headed by Clarence W. Miles has called at-
11 tention. But a far easier and safer course is readily
12 available: Drop lotteries as a constitutional issue al-
13 together and leave the relatively inconsequential subject
14 to Maryland legislators, whose actions would be subject
15 to public referendum if they happened to go haywire. The
16 Miles Commission suggests this easier course not because
17 it is soft on lotteries (it opposes them), but because it
18 has confidence in legislative wisdom. That should be good
19 enough for the Constitutional Convention as well."

19 THE CHAIRMAN: Any other amendments to the
20 section just added by Amendment 21? If not, we will
21 pass on and come back to the amendment being prepared by

1 Delegate Malkus.

2 If you will advise the Chair when ready we
3 will come back to it. The Chair is advised that Delegate
4 Adkins desires to move for reconsideration.

5 DELEGATE ADKINS: Mr. Chairman, I should like to
6 move that the action by which Amendment 20 to Committee
7 Recommendation R&P-1 was rejected be reconsidered.

8 This is the vote that relates to the deletion
9 of the word "damage" from the condemnation provision.

10 THE CHAIRMAN: Is there a second?

11 (The motion was seconded.)

12 THE CHAIRMAN: It having been moved and seconded
13 that the vote by which Amendment Number 20 was rejected
14 be reconsidered, the Chair recognizes Delegate Adkins to
15 speak to the motion.

16 DELEGATE ADKINS: Mr. Chairman and ladies and
17 gentlemen of the Convention, it seems to me that the action
18 of this body in rejecting the amendment offered by Delegate
19 Gilchrist to eliminate the word relating to damage in
20 the condemnation section will turn out to have been a
21 serious mistake in terms of enforcement of the provisions

1 of this article. I do not desire to rehash the argument
2 that was presented in favor of the amendment and also in
3 its opposition, except to say this.

4 The word "damage", per se, in Maryland, has
5 not been defined by the courts in this context. Now,
6 I am quite aware as the majority report argues that there
7 are some 20-odd states which have used this language in
8 their Constitution. I am also aware that these 20 states
9 have to some extent built up a judicial history or judicial
10 definition of the term but I am equally aware that the
11 Court of Appeals is by no means bound by the judicial
12 meaning of that language in any other state.

13 The net result is, it seems to me, if this lan-
14 guage is continued in the Constitution or is for the first
15 time implemented in the Constitution of Maryland, it
16 would mean that substantially every case involving con-
17 demnation of the real estate in Maryland would have to
18 be finally adjudicated by the Court of Appeals.

19 In addition to being an extremely expensive
20 situation for the litigants involved, this will also
21 mean delay in the implementation if necessary of public

1 improvements, it will ultimately mean great additional
2 expense primarily to the property owner.

3 I have for a good many years been reasonably active
4 in the field of condemnation as have most lawyers. In
5 general my representations have been for the property
6 owners so I am interested in seeing everything done to
7 protect the rights of the property owners that can be
8 done.

9 I suggest to you that this does not do it. The
10 language if eliminated still leaves open the right to
11 the General Assembly to describe the term "property."
12 In the last five years they have seen fit to considerably
13 broaden the terms by permitting the allocation of addi-
14 tional items of damage in condemnation cases in addition
15 to the actual value of the property taken.

16 The unstabilizing effect of this language is,
17 it seems to me, greatly to be regretted. I would therefore
18 urge this Convention to reconsider its position and to
19 adopt the Gilchrist Amendment eliminating this questionable
20 language from the Constitution.

21 THE CHAIRMAN: Delegate Kiefer.

1 DELEGATE KIEFER: Mr. Chairman and ladies and
2 gentlemen of the Committee, I rise to oppose the motion
3 to reconsider; I note that Delegate Adkins did not vote.
4 I don't know whether he was not here to hear all the argu-
5 ments.

6 There were many misleading statements. One
7 person said this would affect property for miles around
8 and people could collect damages. I am not at all impressed
9 with his argument that this will create new problems and
10 new laws will be required. It has been done in many other
11 states. It has been orderly and properly developed.

12 One other point that I think Delegate Adkins
13 has missed and that is that under the present rulings
14 of our court, there are only damages allowed when the
15 property is physically taken and this allows the property
16 owners, the citizens of Maryland, it enlarges their rights
17 for damage when their property is taken by the sovereign
18 state which has the right to take property.

19 Consequently, I say to you all we are doing is
20 to restate a right of the individual, a personal freedom ,
21 and we are enlarging it to the extent of permitting damages

1 in a situation where modern times demands damages under
2 certain peculiar circumstances.

3 This is not running wild with the public's
4 money, in certain circumstances where a taking damages
5 property without physical taking.

6 The Court of Appeals while they may have damages,
7 it is only when property is actually taken. There are
8 many instances where property is not taken where you are
9 damaged. It is nothing to get excited about. It has work-
10 ed out in many states.

11 I don't think our Court of Appeals or our
12 legislature has run wild on allowing damages. We adopted
13 this resoundingly. I hope we will defeat the motion for
14 reconsideration as resoundingly.

15 THE CHAIRMAN: Any other delgate desire to speak
16 in favor of reconsideration?

17 Delegate Macdonald.

18 DELEGATE MACDONALD: Mr. Chairman, Delegate
19 Bard and I have requested the printing of an amendment
20 which we would offer if this is reconsidered and if that
21 has been printed, Mr. Chairman--

1 THE CHAIRMAN: Is that the Amendment AR?

2 DELEGATE MACDONALD: I haven't seen it.

3 THE CHAIRMAN: It adds the phrase "as the latter
4 term shall be defined by law."

5 DELEGATE MACDONALD: Yes.

6 THE CHAIRMAN: It is printed.

7 Will the pages please distribute Amendment AR.

8 Did you wish to speak further on the matter,
9 Delegate Macdonald?

10 DELEGATE MACDONALD: Yes, Mr. Chairman.

11 THE CHAIRMAN: You may proceed.

12 DELEGATE MACDONALD: Fellow Delegates, I hope
13 you will vote in favor of the motion to reconsider. I
14 do believe that we are embarking here if this section is
15 not amended, on an uncharted course.

16 We have no case law in the state of Maryland
17 which would point the way, which would tell us what
18 damages are compensable in cases which would arise. We
19 have no way of knowing what the limits are.

20 Many of us are fearful that we have opened the
21 floodgates. I am sure that if this matter were considered

1 by the General Assembly they would hold hearings for
2 days on the subject.

3 The amendment which Delegate Bard and I propose
4 to introduce, if you will reconsider this matter, would
5 not prevent the awarding of damages, it would simply
6 allow the General Assembly to pass suitable laws to lay
7 down the guidelines.

8 As Delegate Henderson has pointed out to you
9 without these guidelines, we would be in an extremely
10 nebulous and uncertain area.

11 Now, the Committee seeks to assure you, seeks
12 to say, "Well, take our word for it, everything is going
13 to be all right." I submit to you that the report of
14 the committee on this matter is very short and skimpy.
15 They do not tell us -- they don't give us one example in
16 which damages would be allowed and in which they would not
17 be allowed and I refer you to page 27 of the majority
18 report.

19 THE CHAIRMAN: You have one-half minute, Dele-
20 gate Macdonald.

21 DELEGATE MACDONALD: I repeat, we are fearful

1 that we would be opening the floodgates. Please reconsider
2 so that this amendment which would simply allow the
3 General Assembly to lay down the guidelines, may be
4 considered.

5 THE CHAIRMAN: Any other delegate desire to
6 speak in opposition to the motion?

7 Delegate Burgess.

8 DELEGATE BURGESS: Ladies and gentlemen of the
9 Convention, you heard most of the arguments yesterday on
10 this subject.

11 Please be assured that I and members of the
12 committee would be among the first to fight if we thought
13 this was a raid upon the treasury or a possibility of a
14 raid upon the treasury.

15 This concept which appears here was first set
16 forth in the State of Illinois in 1870. This is three
17 years younger than the Constitution we are trying to modern-
18 ize. 26 of the 50 states have this particular concept in
19 there.

20 Now, certainly I have not been at the Bar so long
21 as some of our eminent individuals who have spoken on the

1 subject, but I am not sure they studied the law.

2 I did have an opportunity to work with a
3 Congressional Committee. My area of responsibility was
4 railroad right of way. I say to you that I don't think
5 you will be able to tell the difference. It is merely an
6 awareness, a realization that when planners draw lines
7 between Point A and Point B, that there is sometimes
8 flesh and blood between those lines.

9 It is an attempt to recognize that injustices
10 are sometimes worked on small property owners whose pro-
11 perty is in fact not physically touched but upon whom a
12 tremendous burden or loss occurs.

13 The economy of this thing is such that certain
14 people bear an undue burden as regards the rest of us. It
15 is an attempt to recognize this and bring it into conformi-
16 ty with existing laws in our sister states.

17 There is no judge or lawyer who would tell
18 you we do not look to laws in sister states. There are
19 97 years of case law in adjoining states. Yet in 97
20 years we have not been able to recognize this very narrow
21 concept which is not pie in the sky.

1 For God's sake, we have recognized it now,
2 let us keep something forward looking, something which is
3 acknowledgment of the problems of our citizens of this
4 state and which will serve that purpose and will not open
5 the doors to the treasury.

6 May I cite to you a certain case occuring in
7 California, which is a liberal state if ever there was one.
8 This case involved the changing of a highway from a two-
9 lane highway to four lanes either way.

10 A business attempted to collect damages for
11 this reason. The court held that the abutting property
12 owner has no right to compensation because he has no right
13 to any particular flow of traffic.

14 Now this, I think, tends to illustrate what we
15 are talking about here. You cannot act like a litigious
16 nut and run in and sue the state for damages every time
17 you are close to something like this. It just can't be
18 done.

19 THE CHAIRMAN: Delegate Marvin Smith.

20 DELEGATE M. SMITH: This vote here yesterday
21 disturbed me as much as anything that has taken place.

1 There have been other votes with which I disagreed, but
2 none in which I felt so strongly that an absolute error
3 had been made.

4 I was fearful that due consideration had not
5 really been given here. I was fearful that people were
6 to some extent not understanding, and carried away by
7 their desire to benefit those whose property is taken.

8 My experience at the Bar has been on the side
9 of people whose property has been taken. Note specifically
10 that there appears to be disagreement here between the
11 Chairman of the Committee and the chief sponsor as to
12 the language and what is meant by the word "damage."

13 Note, also, that the language here is "taken or
14 damaged" and not "taken and damaged".

15 It may well be, Mr. Chairman, that the
16 condemnation law of this state requires an overhauling, but
17 I submit to you that we cannot very well do that in the
18 short period of time that we have here. That the proper
19 course of action would be for the proper committee of the
20 General Assembly or the legislative council, if you will,
21 to give careful consideration to the matter and consideration

1 of the full impact.

2 I notice, specifically, that although it was
3 indicated that the city of Baltimore had been asked to
4 comment on this that apparently there has been no con-
5 tact other than an apparently merely passing one with the
6 State Road's Commission.

7 I Think this was a hasty action. I hope that
8 you will vote to reconsider and then vote for the
9 amendment.

10 THE CHAIRMAN: Delegate Kiefer.

11 DELEGATE KIEFER: Mr. Chairman, I have to rise
12 to say there is no disagreement between the chairman and
13 any members of the committee on this point. I don't
14 know how Delegate Smith gets that idea.

15 I also call everybody's attention to the
16 committee's report on page 28 where we point out that
17 the measure and nature of compensable damage are matters
18 properly left to the legislature and the courts.

19 All of the amendments or all of the Constitu-
20 tions which carry these words, carry these words and no
21 more and all of them are implemented by acts of the

1 legislature.

2 There is no question about that and they are
3 interpreted by the courts of each state. This is not
4 a radical thing and not a dangerous thing. We are not
5 giving away anything. We have not sought anybody's ad-
6 vice except experts and when the city of Baltimore came
7 out with some questions we pointed out to them the situation
8 as we have gone into it and they withdrew any objections
9 they had.

10 I urge you to defeat this. The amendment which
11 is suggested is covered and inherently a part of this. I
12 have no objection to the language but it is not necessary.

13 THE CHAIRMAN: Delegate Bard.

14 DELEGATE BARD: Mr. Chairman, I should like to
15 speak in favor of reconsideration, and I would like to
16 call your attention to the fact that there are two names
17 on the sheet labeled AR, Mr. Macdonald, who voted yes-
18 terday against the proposal dealing with damages, and I,
19 who voted for.

20 We put together this amendment because we
21 both felt, at least I felt, that the whole concept of

1 damages was good--

2 THE CHAIRMAN: Let the Chair interrupt you be-
3 cause there is apparently a misconception or else the
4 Chair is not understanding the situation.

5 The present motion is for reconsideration of
6 Amendment 20.

7 DELEGATE BARD: I understand that.

8 THE CHAIRMAN: Just a second.
9 an
10 Amendment 20 was/amendment which would remove
the words "or damaged" from Section 9(B).

11 DELEGATE BARD: That is right.

12 THE CHAIRMAN: If the motion for reconsidera-
13 tion is carried, then Amendment 20 to remove those words
14 is before the committee. If the motion for reconsidera-
15 tion is rejected, Section 9(B) is still open to amendment,
16 and Amendment AR would be properly considered as an
17 amendment to Section 9.

18 In other words, if the words are removed, there
19 is nothing for your amendment to apply to. If the
20 words remain in, your amendment would apply to them.

21

1 DELEGATE BARD: May I ask this question.

2 Would the amendment as indicated on AR be pos-
3 sible only then if reconsideration fails, is that correct,
4 from what you have said?

5 THE CHAIRMAN: No, you could rephrase your
6 amendment so that your amendment could be offered as a
7 substitute for Amendment 20, but what I am trying to
8 point out to you is that your right to offer your amend-
9 ment AR does not depend upon the outcome of the motion to
10 reconsider.

11 DELEGATE BARD: I thought it was the other way
12 around.

13 THE CHAIRMAN: Mr. Gleason.

14 DELEGATE GLEASON: In view of that elucidation
15 on the situation, could I suggest to the sponsors of the
16 amendment that they now offer it, please?

17 THE CHAIRMAN: Could you suggest what, Delegate
18 Gleason?

19 DELEGATE GLEASON: Could I suggest to the
20 sponsors of this amendment that they withdraw their motion
21 to reconsider and, instead, offer their amendment.

1 THE CHAIRMAN: The sponsors of the motion are
2 not the ones who made the motion to reconsider.

3 Delegate Adkins is the one who made the motion
4 to reconsider. Do you want to make that suggestion to
5 Delegate Adkins?

6 DELEGATE GLEASON: Yes.

7 THE CHAIRMAN: Delegate Adkins.

8 DELEGATE ADKINS: Mr. Chairman, I would prefer
9 to have the motion to reconsider considered by this body.
10 My own feeling is that we would be in a stronger posture
11 if we eliminated the words from the Constitution which
12 would thereby leave the General Assembly in a position
13 to add such measure of damages in condemnation cases as it
14 saw wise.

15 It seems to me that the addition of the language
16 in the Constitution raises many questionable problems
17 during the hiatus of the adoption of the Constitution and
18 the time when the General Assembly should see fit to act.

19 My position therefore is that I would prefer
20 to have the language eliminated should the Convention
21 reject that proposal, I should then prefer to have the

1 amendment considered, but I would like to have the
2 motion to reconsider and the original Gilchrist amendment
3 again considered by the Convention.

4 THE CHAIRMAN: Delegate Kiefer.

5 DELEGATE KIEFER: Mr. Chairman, I have to rise
6 to a point here. Delegate Adkins is incorrectly stating
7 a legal situation.

8 The General Assembly cannot add "damages to"--
9 as we contemplate in this amendment because the word "use"
10 by itself in the Constitution as we have studied it and
11 read it and as it has been interpreted by the court means
12 only a physical taking and this goes beyond that, so the
13 legislature would not have an opportunity to provide for
14 damages other than damages when there is involved an
15 actual physical taking.

16 That is the reason why we put this in the Con-
17 stitution.

18 THE CHAIRMAN: Delegate Kiefer, the Chair is
19 lost completely. I may not have caught what Delegate
20 Adkins said at the last.

21 Are you saying that if there were no provision

1 at all as to eminent domain in the Constitution that the
2 legislature would not have the power the provide compen-
3 sation for either taking or damage?

4 DELEGATE KIEFER: No, sir, I did not say that.

5 What I said was this, that where the Consti-
6 tution provides for compensation for a taking, that the
7 taking as defined by the Court of Appeals means a
8 physical taking and, therefore, by Court of Appeals
9 decisions in this state, damages cannot be awarded under
10 the Constitutional provision unless there is a physical
11 taking, so--

12 THE CHAIRMAN: Let me again see if I understand.

13 What you are saying is that the Constitution
14 without the words "damage" would not require compensation
15 except for a taking, but you were not saying that the
16 legislature could not voluntarily provide for compensation
17 for damages?

18 DELEGATE KIEFER: No, sir. I was saying exactly
19 the opposite. I was saying that if the Constitution does
20 not provide for damages the General Assembly cannot allow
21 for damages under the ruling of our Court of Appeals, that

1 is why we put the word damage in.

2 THE CHAIRMAN: The Chair would not agree with
3 that interpretation nor do I think the Chairman of the
4 Committee of the Legislative Branch would, Delegate
5 Kiefer.

6 I may not be understanding what you are saying,
7 and I would like the record to be very clear on it.

8 DELEGATE KIEFER: I have to withdraw those re-
9 marks. My legal adviser tells me despite these rulings
10 of the Court of Appeals the legislature could provide for
11 damages other than for a taking.

12 If he says so, I will abide by that. I still
13 say we should leave what we have done as is and defeat
14 the motion to reconsider.

15 THE CHAIRMAN: Very well.

16 Delegate Henderson.

17 DELEGATE HENDERSON: I don't know exactly where
18 we are in this point of debate, but I would like to put
19 in my two cents worth, if I may, in support of the motion
20 to reconsider.

21 It seems to me that this matter should be

1 reconsidered and the words "or damage" should be taken
2 out of the proposal. The great difficulty with those words,
3 it seems to me, is this: that once you get away from the
4 property that is taken and try to compensate people whose
5 property is not taken, you open the door so wide that
6 it would require years of definition to even partially
7 close it and for that reason, I think it is a matter
8 that should be worked out at the legislative level.

9 Now, it is perfectly clear to me that by taking
10 the words "or damaged" out of the Constitution, you leave
11 the legislature perfectly free to legislate in that whole
12 field and to award damages to whomever they please, but
13 as I have read the cases in other states, these cases
14 range all over the field.

15 They go to extreme limits in awarding damages
16 to people who are only slightly and incidentally damaged
17 and it seems to me this would be a tremendous clog on the
18 whole judicial process of condemning property for public
19 use which would be of great harm to the people of the
20 state of Maryland.

21 Therefore, I would urge, strongly urge, that we

1 reconsider this matter and delete the words "or damaged"
2 from the amendment.

3 THE CHAIRMAN: Delegate Churchill Murray.

4 DELEGATE C. MURRAY: Mr. Chairman.

5 THE CHAIRMAN: Do you desire to speak in
6 opposition to the motion to reconsider?

7 DELEGATE C. MURRAY: Yes, sir.

8 THE CHAIRMAN: Delegate Murray.

9 DELEGATE C. MURRAY: Is it proper that I
10 direct a question to Delegate Adkins? I pick upon him--

11 THE CHAIRMAN: Not if someone else desires to
12 speak in opposition.

13 Does any other delegate desire to speak in
14 opposition to the motion?

15 Delegate Clagett.

16 DELEGATE CLAGETT: Will Delegate Henderson
17 yield to a question?

18 THE CHAIRMAN: Not so long as someone desires
19 to debate.

20 Does anyone desire to speak in opposition?

21 Delegate Dukes.

1 DELEGATE DUKES: I probably at one time or
2 another will ask things of this Convention and cry and
3 wail and complain and shout and scream, but I hope I
4 will never stand up and advise this Convention that I
5 don't think you understood the issue, that I don't
6 think you understood what we were talking about, and I
7 think that I understand it and nobody else understands it.

8 That is what you are being asked now, you are
9 being asked to reconsider because you didn't really know
10 what you were doing yesterday when you voted . You didn't
11 know what damages were, you didn't understand that when
12 people get hurt, they ought to be paid for it.

13 As you ride out Indian Highway in Prince
14 Georges County, there is a house on the right-hand side of
15 the road. It must have cost about \$50 thousand. You see
16 a road that runs right up to his front door. He used to
17 have a front yard running right up to his door, but now
18 has a clay cliff running up to his door.

19 I don't know who he is, but he has been damaged.
20 If the state of Maryland runs around like a mad dog in
21 a meat house on this proposition that is one thing, but

1 if they are careful of what they do, maybe they won't
2 have to pay people so much money.

3 There is a good deal of case law about damages.
4 You have to prove damages. Juries don't just hand money
5 out and legislatures don't just hand money out. You
6 have to prove damages.

7 If you have been hurt, you ought to be paid for
8 it, and if you haven't been hurt or damaged juries won't
9 give it to you and the Maryland Court of Appeals won't
10 give it to you.

11 I don't think we will bankrupt this state any
12 more than the other 23 states who have this have been
13 bankrupt.

14 THE CHAIRMAN: Any other delegates want to
15 speak in favor?

16 Delegate Adkins, will you take the floor to
17 respond to a question?

18 DELEGATE ADKINS: Yes, sir.

19 DELEGATE E. CHURCHILL MURRAY: Perhaps I
20 should apologize to Delegate Adkins, because I was
21 really using him as a vehicle. I want to address a

1 question, perhaps I should have addressed it to the
2 delegates as a whole.

3 I want to ask how long the General Assembly
4 has had an opportunity to correct this situation and
5 has failed to do so?

6 THE CHAIRMAN: Delegate Adkins.

7 DELEGATE ADKINS: I assume under its plenary
8 powers it has specified the amount that it is willing
9 to have its treasury award the property owners for takings
10 of the state since its inception.

11 In the last four or five years it has made sub-
12 stantial amelioration to the problem by statute. The
13 legislature still has under intensive study this whole
14 problem. I don't think it is a matter that should be dealt
15 with in the Constitution unless we consider ourselves a
16 legislative body for enactment of legislature to cure
17 all the ills of the state.

18 I do not consider that is the purpose for which
19 we are assembled.

20 THE CHAIRMAN: Delegate Murray.

21 DELEGATE C. MURRAY: Possibly that was not a

1 fair question, but in any event I lack the advantage that
2 you gentlemen have of legal training, but I agree with
3 Delegate Dukes, that it is very, very easy to see the
4 injustice and the harm that is being put upon individuals
5 and that now we suggest backing off from as a state.

6 How long do I have, sir?

7 THE CHAIRMAN: You have a little over a minute.

8 DELEGATE C. MURRAY: I share the apprehension
9 of you gentlemen who think that this will be extremely
10 difficult to determine, but I think that with the train-
11 ing that you have, with the talent that is collected
12 here today if anyone in Maryland can determine this, can
13 lay down guidelines, you can.

14 In any event, I do not think that a retreat
15 from our obligation is the right answer.

16 THE CHAIRMAN: Any other delegate desire to
17 speak?

18 Delegate Rybczynski?

19 DELEGATE RYBCZYNSKI: Mr. Chairman, I
20 should like to speak against the motion to reconsider for
21 the reason that I listened very carefully to the arguments

1 last night and yesterday afternoon and I have heard
2 absolutely nothing new today which should convince anyone
3 to change their vote.

4 All of their arguments which were presented on
5 both sides today were presented yesterday and very forcibly.
6 There is no reason for anyone to change their vote today.

7 I strongly urge everyone to vote against
8 reconsidering.

1 THE CHAIRMAN: Are you ready for the question?
2 Delegate Anderson.

3 DELEGATE ANDERSON: Mr. Chairman, I arise to
4 oppose the reconsideration of this amendment.

5 Let me say this -- I feel somewhat under an
6 obligation to speak. I didn't speak before, but early in
7 this Convention, I did have a proposal. I presented it to
8 the Committee. I went before the Committee and argued in
9 favor of including the word "damages", and I feel obligated
10 at this point simply to say that I am opposed to reconsidera-
11 tion, as Mr. Dukes, or Delegate Dukes, said, of this matter,
12 which was overwhelmingly passed the other day, and now after
13 several days, someone comes in with the idea that it is all
14 wrong and ought to be reconsidered.

15 I know of a number of amendments that have been
16 passed that perhaps should be reconsidered but I say, let's
17 get on with this matter and not worry about the question of
18 damages.

19 It is a simple proposition. As Delegate Adkins
20 says, there are 21 States that use this word in their
21 Constitution and I can easily find out what those damages

1 are and so can any other attorney, so I oppose the
2 reconsideration of this amendment.

3 THE CHAIRMAN: Are you ready for the question?

4 The Clerk will ring the quorum bell.

5 The question arises on the motion to reconsider
6 the vote by which Amendment Number 20 was rejected. If the
7 motion is carried, Amendment Number 20 will be before you
8 for such action as you desire. If the motion is rejected,
9 Amendment Number 20 will remain rejected.

10 The Chair will recognize Delegate Bard to submit
11 the Amendment AR, which has already been distributed to your
12 desks.

13 The question now arises on the motion to
14 reconsider the vote by which Amendment Number 20 was
15 rejected. A vote Aye is a vote in favor of reconsideration,
16 a vote No is a vote against. Cast your votes.

17 Has every Delegate voted? Does any Delegate
18 desire to change his vote? The Clerk will record the vote.

19 There being 62 votes in the Affirmative and 62
20 votes in the negative, the motion for reconsideration fails.

21 Mr. Hutchinson.

1 DELEGATE HUTCHINSON: For some reason my switch
2 didn't work but I vote No.

3 THE CHAIRMAN: Delegate Hutchinson will be
4 recorded as voting No. The tally will be 62 votes in the
5 affirmative, 63 votes in the negative. The motion for
6 reconsideration fails.

7 The Chair recognizes Delegate Bard. Do you
8 desire to submit your Amendment AR?

9 DELEGATE BARD: Yes, sir.

10 THE CHAIRMAN: This will be Amendment Number 24.

11 The Clerk will read the Amendment.

12 MR. QUILLEN: Amendment Number 24 to Committee
13 Recommendation R & P-1 by Delegates Bard and Macdonald:

14 On page 4, section 9, limitations on State action, in
15 line 18, after the word "damaged" add the following words:
16 "comma, as the latter term shall be defined by law".
17
18
19
20
21

1 THE CHAIRMAN: The Amendment having been submitted
2 by Delegate Bard, seconded by Delegate Macdonald, the Chair
3 recognizes Delegate Bard to speak to the amendment.

4 DELEGATE KIEFER: Mr. Chairman.

5 THE CHAIRMAN: Delegate Kiefer.

6 DELEGATE KIEFER: Mr. Chairman, in an effort to
7 save time, I am beginning to think it is like the French
8 Army maxim, Number 1, "Never obey an order until you get
9 ze change." This doesn't do any harm. We anticipate such
10 a matter would have to be implemented by legislation. If
11 it would make people happier as far as I am concerned, we
12 will accept the amendment as submitted.

13 THE CHAIRMAN: Delegate Bard, in view of the
14 statement by the Chairman of the Committee, do you desire
15 to speak further?

16 DELEGATE BARD: To save time, I have nothing
17 else to say.

18 THE CHAIRMAN: Delegate Clagett.

19 DELEGATE CLAGETT: Will Delegate Kiefer yield
20 to a question.

21 THE CHAIRMAN: Delegate Kiefer.

1 DELEGATE KIEFER: Yes.

2 THE CHAIRMAN: Delegate Clagett.

3 DELEGATE CLAGETT: Delegate Kiefer, is it not
4 true that during the interim between the passage and
5 effective date of the Constitution, and the time when the
6 General Assembly shall act by law, that the Courts would
7 determine the meaning to the word, "damage", as used in
8 this Bill of Rights section?

9 THE CHAIRMAN: Delegate Kiefer.

10 DELEGATE KIEFER: I would not only answer in the
11 affirmative, but I would also say that whatever the legis-
12 lature spells out, the Court is going to have to interpret
13 and effectuate and implement, too.

14 THE CHAIRMAN: Delegate Clagett.

15 DELEGATE CLAGETT: I agree with you there, but
16 before the legislature acts, that is, before the General
17 Assembly acts, any cases that come before the Courts during
18 the interim, between the effective date of the Constitution
19 and the time the General Assembly acts, the Courts themselves
20 would give a definition to the word "damage", which could
21 be a guide to the General Assembly.

1 THE CHAIRMAN: Is that a statement or a question?

2 DELEGATE CLAGETT: Question.

3 THE CHAIRMAN: Delegate Kiefer.

4 DELEGATE KIEFER: Yes, sir.

5 THE CHAIRMAN: Very well.

6 Delegate Wiedemeyer.

7 DELEGATE WIEDEMEYER: I had a question, but I
8 think I was in error. I was going to ask him what the
9 latter term meant, whether it meant public use purposes or
10 compensation. He may have meant it to mean "damages" but
11 I don't know whether it is so clear from reading the
12 amendment.

13 THE CHAIRMAN: Well, so that there will be no
14 doubt, the Chair will ask the sponsor and ask the Committee
15 on Style to note.

16 The question raised is whether in Line 5 of the
17 amendment, the words "latter term" is intended to refer to
18 damage or to some other word in Section 9B.

19 Delegate Bard.

20 DELEGATE BARD: Damage.

21 THE CHAIRMAN: Does that answer your question,

1 Delegate Wiedemeyer?

2 DELEGATE WIEDEMAYER: Yes, Mr. Chairman.

3 THE CHAIRMAN: Delegate Kiefer.

4 DELEGATE KIEFER: Mr. Chairman, I don't think
5 that my answer to Delegate Clagett was recorded. My answer
6 to his question was Yes, the Courts would have to interpret
7 and perhaps provide guidelines until the legislature had
8 acted.

9 THE CHAIRMAN: Delegate Johnson.

10 DELEGATE JOHNSON: Because of Delegate Kiefer's
11 answer to that question, I have a question for Chairman
12 Kiefer.

13 THE CHAIRMAN: Very well.

14 Delegate Kiefer, will you respond to a question?

15 DELEGATE KIEFER: Yes.

16 THE CHAIRMAN: Delegate Johnson.

17 DELEGATE JOHNSON: Chairman Kiefer, just so that
18 the record is perfectly clear, you are not precluding the
19 possibility of either your Committee or the General Provisions
20 Committee providing by way of a transitory provision that
21 this particular section would not be applicable until perhaps

1 a year later, so that the legislature would have an oppor-
2 tunity to set the necessary guidelines? Is that so?

3 THE CHAIRMAN: Delegate Kiefer.

4 DELEGATE KIEFER: Yes.

5 THE CHAIRMAN: Are you ready for the question?

6 Delegate Bamberger.

7 DELEGATE BAMBERGER: Mr. Chairman, I rise to
8 speak against this amendment, and I suggest that the
9 Chairman of the Committee and the Members of the Committee
10 consider the effect of this. As I understand it, it now
11 means that that right to compensation for property which
12 is not taken but which is damaged is circumscribed by what-
13 ever law the General Assembly might enact. If it was the
14 intention of the Committee to give to the owners of property
15 compensation where property was not actually taken but
16 damaged, as that word is defined in the decisions of the
17 Courts which have similar constitutional provisions, then
18 this amendment does absolute violence to that intention of
19 the Committee.

20 The amendment says that a property owner will
21 have a right to compensation when his property is not

1 actually taken, but merely damaged, as the General Assembly
2 defines damages. The General Assembly may define damage
3 as being a broad right. They may decide to define it as a
4 right the same as it is defined by the decisions of the
5 Courts, but they may also define it in a very limited way
6 and could define it really as being no broader than the
7 taking of property.

8 Now, if I misconstrue the amendment, I hope the
9 Chairman will respond. I do believe that if I interpret the
10 amendment correctly, that it gives to the General Assembly
11 in effect the right to remove the word, "damaged", from the
12 Constitution.

13 I don't mean that literally. Obviously, they
14 can't do that, but they can define "damaged" in such a
15 limited way that the right which the Committee intends to
16 give will be absolutely nothing, will be absolutely worth-
17 less, and if I am correct, then I am disturbed by the
18 Chairman's acceptance of this amendment.

19 THE CHAIRMAN: Any other Delegates desire to
20 speak on the amendment?

21 Delegate Macdonald.

1 DELEGATE MACDONALD: Mr. Chairman, the sponsors
2 of this amendment agree substantially with Delegate Bamber-
3 ger. This gives the General Assembly the power to circum-
4 scribe, as he puts it, this right to damages and that is
5 the purpose of the amendment. We are fearful that the flood-
6 gates, without this amendment, the floodgates will be opened,
7 will be in an uncharted field. There is no law in the State
8 of Maryland in this matter. Up to this time, damage to
9 property where there is no taking has not been compensable,
10 and if we are going to shift gears in this way, we think
11 that the General Assembly should sit down and lay down the
12 guidelines.

13 I think we have to have a little fight in the
14 General Assembly to legislate, and that is all this amend-
15 ment does.

16 THE CHAIRMAN: Any other Delegate desire to speak
17 in opposition to the amendment?

18 Delegate Clagett.

19 DELEGATE CLAGETT: Mr. Chairman, I share with
20 Delegate Bamberger the concern about the Chairman of the
21 Committee accepting this amendment in the language in which

1 we have it before us because as I read that language I
2 interpret it to mean that the General Assembly, by its
3 definition, could exclude the extension of damages which I
4 believe are contemplated here in Section 9, and on that
5 basis, retain and keep the existing compensation exactly as
6 is, which certainly is not the intent of the Committee, and
7 the intent of Section 9 as it is presently written.

8 I was intending to suggest to Delegate Kiefer
9 that during the interim period, and the reason why this
10 language should be opposed, the interim period between the
11 effective date of the Constitution and action by the General
12 Assembly, and the General Assembly can act, there is no
13 question about that, the Courts would interpret the word,
14 "damage", and would give guidelines along which the General
15 Assembly could and in all probability would act, but with
16 these words, as presently before us in this amendment, where
17 the exclusive right to define the word "damage" is left to
18 the General Assembly, in fact it is made mandatory, it means
19 only its interpretation and definition will be applicable
20 and in that way the General Assembly can nullify the very
21 right which the Committee is seeking to give.

1 THE CHAIRMAN: Delegate Bard.

2 DELEGATE BARD: Mr. Chairman, I had not planned
3 to speak on this point but I am afraid I have to.

4 I had started earlier by saying that this amend-
5 ment came into being by having two individuals who split
6 it up as an end of the pole the other day in connection with
7 this point, gathered in connection with their mutual
8 concern. There was a concern that perhaps this whole thing
9 had not been thought through in terms of its end. I for
10 one believed that the State had responsibilities in connec-
11 tion with damage but I did think that within the memorandum
12 that the Majority Report had indicated were words that were
13 terribly important, namely, the pleasure and nature of
14 compensable damages are matters properly left to the legis-
15 lature.

16 This is Page 28 of the Majority Report Memorandum.

17 The intent had been cleared, and they did add,
18 in the Courts.

19 New York State believed this whole concept was so
20 important that within its statement read the following:

21 "Private property shall not be taken or damaged

1 as such latter term is defined by law for public use or
2 purpose without just and timely compensation."

3 In other words, they believed that you ought not
4 leave this to the memorandum. The Majority Report has not
5 changed its opinion by agreeing with our view. It is merely
6 saying the taking out of the memorandum and placing it into
7 the Constitution proper, it is highlighting that concern
8 which some of us have.

9 The fact that Mr. Macdonald and I could get
10 together on this indicates that this is a common meeting-
11 place for us on this debatable question.

12 THE CHAIRMAN: Delegate Wiedemeyer.

13 DELEGATE WIEDEMEYER: Mr. President and Members
14 of the Convention, I hope that Delegate Macdonald or
15 probably Delegate Kiefer haven't fallen into a trap on this
16 thing because there are different types of damages in
17 condemnation cases. As has been pointed out, there is a
18 resulting or consequential damage to property, some part of
19 which has been taken.

20 Now, when there has been some taking of your
21 property, you have the consequential damages which the Courts

1 have already defined and which are allowed. Then in
2 addition to that, there is a type of damage that occurs when
3 no part of your property has been taken. That is what the
4 amendment or the Committee's Recommendation intends, that it
5 refer and include those properties really damaged and in
6 fact damaged when there has been nothing taken.

7 Now, when we use the words in this present amend-
8 ment, we may be taking away all the construction placed on
9 consequential damages, already in existence, and known to
10 us, and put that matter wholly in the hands of the legis-
11 lature and say, go to the legislature, in the field of
12 damages, whether consequential damages or damages not as a
13 result of the taking, you have the sole authority to legis-
14 late, and define, and the legislature if it wanted to
15 could restrict inconsequential damages under this amendment.

16 I, therefore, think think this amendment is
17 very bad and should be defeated, no matter if it did have
18 some good intent by the sponsor.

19 THE CHAIRMAN: Delegate Gleason.

20 DELEGATE GLEASON: Mr. Chairman, let me say,
21 despite the clouds that have arisen over this amendment,

1 that I think this amendment offers the best possible solution
2 to a very, very difficult problem and a problem really that
3 in my judgment ought to be handled in a legislative arena
4 rather than in a Constitutional Convention.

5 I disagree with the sponsor of the amendment's
6 intention, and I have to disagree in this fashion. I think
7 the Committee Report is clear, that where property is
8 physically taken, compensation has to be given for that
9 physical taking. I think the Committee Recommendation is
10 also clear, that when there is not a physical taking, but
11 there is actually damages to a property, because of the
12 taking, that those damages have to be compensated for.
13 However, the extent of those damages is going to be under
14 this amendment as defined by the legislature. That is the
15 way I interpret the amendment. That is the intent that will
16 be in my vote when I vote for it.

17 THE CHAIRMAN: Any other Delegate desire to speak
18 in opposition?

19 Delegate Kiefer.

20 DELEGATE KIEFER: Mr. Chairman, Ladies and
21 Gentlemen of the Committee, I don't want there to be under

1 any misunderstanding. If there is then, maybe we will have
2 to reconsider this position. What I meant to say and what
3 I thought I had made clear was what the Committee stated on
4 Page 28 of this Memorandum:

5 "The pleasure and nature of compensable damages
6 are matters properly left to the legislature and the Courts."

7 Now, in my ready acceptance of this language, as
8 the latter term shall be defined by law, I had stated
9 previously that this is what we meant. I interpret that the
10 proposed amendment does exactly what we had said here, or
11 means the same, in effect the same thing, and if it does,
12 we are for it. If not, then I will have to withdraw my
13 support of the amendment.

14 THE CHAIRMAN: For what purpose does Delegate
15 Wiedemeyer rise?

16 DELEGATE WIEDEMEYER: I want to ask Delegate
17 Kiefer a question.

18 THE CHAIRMAN: Delegate Kiefer, do you yield to
19 a question?

20 DELEGATE KIEFER: Yes.

21 THE CHAIRMAN: Delegate Wiedemeyer.

1 DELEGATE WIEDEMEYER: I thought our report says
2 the term "damages" would be left to the legislature and the
3 Court and as I interpret this amendment, and I am asking you
4 to look at it in the same light, does not this amendment
5 then take away our intent to have Court interpretation and
6 leave it exclusively in the hands of the legislature?

7 THE CHAIRMAN: Delegate Kiefer.

8 DELEGATE KIEFER: The answer is No, because it
9 doesn't say anything in the amendment about General Assembly.
10 It says "by law", which can be by Court action or action of
11 the General Assembly. That is the point I want to make
12 clear.

13 THE CHAIRMAN: Delegate Kiefer, I think you ought
14 to be aware of the fact that the Committee on Style is
15 consistently and uniformly interpreting the word "law" as
16 used in any Committee Recommendation as meaning a statute
17 enacted by the General Assembly and signed by the Governor,
18 passed by the General Assembly over veto.

19 Delegate Kiefer.

20 DELEGATE KIEFER: I am very sorry. Then I with-
21 draw my support of the amendment. I urge its defeat.

1 THE CHAIRMAN: Can we now vote on the amendment?

2 It seems to the Chair that it has been debated
3 back and forth.

4 Delegate Murray.

5 DELEGATE E. MURRAY: I am sorry, in view of the
6 efforts to settle this, I am sorry to raise my voice, but in
7 view of Delegate Bamberger's apprehension, I shall have to
8 oppose it.

9 THE CHAIRMAN: Delegate Chabot, for what purpose
10 do you rise?

11 DELEGATE CHABOT: I don't know quite how to state
12 it parliamentarily, sir, but Amendment 23 we just adopted
13 used the term as the General Assembly may prescribe by law.

14 Does it mean this would have exactly the same
15 effect if there is no reference to the General Assembly on
16 it?

17 THE CHAIRMAN: I take it the Committee on Style
18 if this amendment is adopted rephrases it to read, as the
19 General Assembly shall prescribe by law. That is a policy
20 they have been following consistently. Are you ready for
21 the question?

1 The question arises on the adoption of Amendment
2 Number 24. A vote Aye is a vote in favor of the Amendment.
3 A vote No is a vote against.

4 Will the Clerk please ring the quorum bell.

5 The question arises on the adoption of Amendment
6 Number 24. A vote Aye is a vote in favor of the Amendment.
7 A vote No is a vote against. Cast your votes.

8 Has every Delegate voted? Does any Delegate
9 desire to change his vote? The Clerk will record the vote.

10 There being 60 votes in the affirmative and 64
11 votes in the negative, the motion is lost. The amendment
12 is rejected.

13 Will the Pages please distribute Amendment AT.

14 Will you please modify your amendment to read as
15 follows:

16 In Line 2, strike the words, "amended by", and
17 put in, "added by", and in Line 3, strike out the words,
18 in Line 10 of the Amendment.

19 The Clerk will read the amendment as thus modi-
20 fied. This will be Amendment Number 25.

21 MR. QUILLEN: Amendment Number 25 to Committee

1 Recommendation R&P-1 by Delegate Malkus:

2 On page 4, section _____, "right to organize
3 and bargain collectively", as added by Amendment No. 21,
4 add the following new sentence: "Employees of the State
5 of Maryland shall not engage in any strike against the
6 State."
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1 THE CHAIRMAN: The amendment has been submitted
2 by Delegate Malkus.

3 Is there a second?

4 (Whereupon, the amendment was seconded.)

5 THE CHAIRMAN: The amendment, having been
6 seconded, the Chair recognizes Delegate Malkus to speak to
7 the amendment.

8 DELEGATE MALKUS: Mr. President, Members of the
9 Delegation, this afternoon we added a new section, sub-
10 section rather, to Section 9 on Page 4 of the R & P Number
11 One, which read as follows:

12 "Employees shall have the right to organize and
13 bargain collectively through representatives of their own
14 choosing."

15 Now to this amendment -- I voted incidentally
16 for the prevailing side of this amendment. I believe that
17 the employees have the right to organize, but I am offering
18 this additional sentence:

19 "This section shall not authorize the employees
20 of the State of Maryland to engage in any strike against
21 the State."

1 Now, Mr. President, I have already spoken on the
2 subject matter. I think we should be primarily interested
3 in the people, and I would be very much disappointed if
4 someone were to call a strike against a State who is
5 allowing the inmates to suffer, as they can, or a strike in
6 time of a great snow storm or other disaster by employees
7 of the State Roads Commission.

8 Now, I have been told, Mr. President, by my good
9 friends in Labor -- not in labor, sir, but in the Labor
10 Movement, that this will never happen, and I say to them,
11 if it will not happen, then this amendment to the amendment
12 will not hurt them in any way.

13 I believe people have got a right to organize
14 collectively but I do not believe they have got a right to
15 organize against the Sovereign State of Maryland.

16 THE CHAIRMAN: Does any Delegate desire to ask
17 questions of the sponsor of the amendment?

18 Delegate Dukes.

19 THE CHAIRMAN: Delegate Malkus, do you yield to
20 a question?

21 DELEGATE MALKUS: I will be very happy to, Mr.

1 President.

2 THE CHAIRMAN: Delegate Dukes.

3 DELEGATE DUKES: Delegate Malkus, do I understand
4 if this language were adopted as an amendment that although
5 it wouldn't authorize employees to strike, neither would it
6 prohibit them from striking?

7 THE CHAIRMAN: Delegate Malkus.

8 DELEGATE MALKUS: Delegate Dukes, your question
9 is well taken.

10 The amendment was written in haste. My intention
11 was that it would prohibit them from striking. That is the
12 intention of the amendment. I would not object to clarifi-
13 cation of the amendment to state that they would be prohibited
14 from voting against, or from striking against the State,
15 which was the intention of the amendment.

16 THE CHAIRMAN: Delegate Dukes, do you have a
17 further question?

18 DELEGATE DUKES: Well, you have answered my
19 question, but you sort of left me in a quandary.

20 I suppose the only other thing I would say, would
21 it not be wise to state the issue clearly, to put before us

1 your intention.

2 THE CHAIRMAN: Delegate Fox, do you have a
3 question?

4 DELEGATE FOX: A point of parliamentary inquiry:
5 In view of Delegate Malkus' interpretation of
6 the meaning of his amendment, I question whether it is in
7 order.

8 The language just passed says, "subject to such
9 regulations as the General Assembly may prescribe by law,
10 such procedural regulations as the General Assembly may
11 prescribe by law", and I question, is this the proper amend-
12 ment to that language?

13 THE CHAIRMAN: It is an addition to the Section.
14 I don't know that it is an amendment to that particular
15 language. I am not sure I follow your point.

16 Why would it not be germane to the Section?

17 DELEGATE FOX: Well, his statement was that he
18 meant this to mean that they could not strike against the
19 State of Maryland.

20 THE CHAIRMAN: It seems to the Chair that it
21 would not necessarily be inconsistent with the provision that

1 the State would prescribe, the General Assembly by law
2 would prescribe procedural regulations to provide absolute
3 prohibition in one area. I do not think the amendment is
4 inconsistent with the previous amendment.

5 Delegate Hardwicke.

6 DELEGATE HARDWICKE: May I pursue the parliamen-
7 tary inquiry raised by Delegate Fox?

8 THE CHAIRMAN: Yes.

9 DELEGATE HARDWICKE: It seems to me if Delegate
10 Malkus' intention is to prohibit a strike, if that concept
11 is not consistent with a right to organize and bargain
12 collectively, which is an affirmative right granted already
13 by amendment, I believe Number 21, and this is an entirely
14 different concept, isn't it, Mr. Chairman?

15 THE CHAIRMAN: The basis of the Chair's ruling is
16 that it does not to the Chair seem inconsistent to state in
17 one section a right to organize and to state in another
18 section, another sentence or clause, that the procedural
19 aspects of that right, or the exercise of that right may be
20 regulated by the General Assembly and to state in another
21 sentence that notwithstanding those provisions, there is a

1 limitation of some sort.

2 It may be that the way this which the three are
3 tied together is grammatically awkward. That would be a
4 question for the Committee on Style. But I do not conceive
5 that it would be impossible to grant a right to organize
6 and then have in effect a proviso that it shouldn't extend
7 to a certain district. At least, that is the basis for the
8 ruling of the Chair.

9 Delegate Hardwicke.

10 DELEGATE HARDWICKE: May I address a question to
11 Delegate Malkus?

12 THE CHAIRMAN: Certainly. Delegate Malkus, do you
13 yield to a question?

14 DELEGATE MALKUS: Yes.

15 THE CHAIRMAN: Delegate Hardwicke.

16 DELEGATE HARDWICKE: Delegate Malkus, do you
17 intend this prohibition to be with regard only to the
18 employees of the State of Maryland, or do you intend it also
19 to reach to employees of political sub-divisions, such as the
20 Counties and the City of Baltimore?

21 THE CHAIRMAN: Delegate Malkus.

1 DELEGATE MALKUS: Mr. President, when I wrote the
2 amendment, I intended it to apply only to the employees of
3 the State of Maryland. I know, Mr. President, when you are
4 trying to get something, you find reasons why it should not
5 have been expanded in other directions, but my intention was
6 to stick to the State of Maryland at the present time.

7 THE CHAIRMAN: Any further questions?

8 Delegate Hardwicke.

9 DELEGATE HARDWICKE: No.

10 THE CHAIRMAN: Delegate Wiedemeyer.

11 DELEGATE WIEDEMEYER: Mr. President, I would like
12 to ask Delegate Malkus a question.

13 I think I understand he wants it against the
14 State of Maryland. I don't know how far the State of Maryland
15 goes inasmuch as there are some County and City hospitals
16 which may be owned by those various subdivisions, or the
17 various subdivisions may contribute heavily to the maintenance
18 of them, and to me it is just as important that the hospitals
19 of Baltimore City, or the hospitals of any County be
20 protected just as much as the various State hospitals and I
21 am wondering if the words, "State of Maryland", are broad

1 enough to include all of the subdivisions and the municipali-
2 ties of the State.

3 THE CHAIRMAN: Delegate Malkus.

4 DELEGATE MALKUS: Mr. President, I intended this
5 to be for the employees of the State of Maryland, as I have
6 said originally, and naturally, we have Courts that can
7 decide as to who are the employees of the State of Maryland.
8 I wrote this amendment up, as many amendments have to be
9 written up, in haste. I wrote it up to cover the employees
10 of the State of Maryland. Now, if you want to go ahead and
11 kill this amendment and find little reasons to vote against
12 it, that, of course, naturally is your privilege, but I am
13 absolutely opposed to employees of the State of Maryland
14 striking against the State and that is the purpose of my
15 amendment.

16 THE CHAIRMAN: Any further discussion?

17 Delegate Key.

18 DELEGATE KEY: I have a question of Delegate
19 Malkus, please.

20 THE CHAIRMAN: Delegate Malkus, do you yield to a
21 question?

1 DELEGATE MALKUS: Mr. President, I never knew I
2 had so much time. You are being mighty lenient with me
3 now, but I will naturally yield to the Lady.

4 THE CHAIRMAN: Delegate Key.

5 DELEGATE KEY: Delegate Malkus, I, too, am
6 concerned and very much interested in the people of the
7 State of Maryland. Unfortunately, I guess, I am interested
8 in all of the people, especially hospital workers, since I
9 have a vested interest there.

10 Now, what I would like to know is this:

11 I know you would be very disappointed if someone
12 -- you used the example of Rosewood State Training School --
13 if one of the attendants there or all of the attendants
14 there left those poor mentally retarded children there
15 because they were under-paid, unable to have a decent
16 standard of living. I wonder if you prevent these people
17 from striking if you would in some way be willing to make
18 the State have an obligation to these people who are giving
19 of themselves unselfishly, so that they when they return
20 from the sick and mentally disturbed and meantally retarded
21 children and go home to their own children, that they have

1 something to carry to, you know, give to their own children,
2 since they are not going to be able to strike to get it.

3 Do you feel the strike is obligated in some other
4 way to provide what they need?

5 THE CHAIRMAN: Delegate Malkus.

6 DELEGATE MALKUS: Mr. President, the Lady did give
7 me a rather long question.

8 I believe, however, I know what it was.

9 In answer to what I thought it was -- I am a
10 State Senator, as you know, and everybody thinks that a
11 State Senator can do wonders, and I live in Cambridge, which
12 is exactly three miles from the Eastern Shore State Hospital,
13 which is the same kind of a hospital that Mrs. Key is
14 talking about. It is a mental hospital. There isn't a
15 week goes by, Mr. President, that I do not have somebody
16 call me on the telephone asking me, "Fred, can't you help
17 me get a job at the Eastern Shore State Hospital?"

18 If that be the case, then I think -- I know they
19 should get more money. We all should get more money. You
20 and I here today should get more money, but the point is to
21 answer her question, that there are a lot of people in our

1 area, very willing, capable of doing this job. They have
2 asked for the job. They beg for the job. They even go to
3 politicians like me to get the job and in answer to the
4 question, there are plenty of people who will take these
5 jobs and do the job well at the present existing salary.

6 THE CHAIRMAN: Any further questions of the sponsor
7 of the amendment?

8 Delegate Marvin Smith.

9 Just a second. Delegate Malkus has left one
10 minute. There are three people seeking to ask questions.
11 Will you make the question short.

12 DELEGATE M. SMITH: Mr. Chairman, I have here in
13 mind clarifying language that I thought would accomplish
14 that which Delegate Malkus might have in mind:

15 If we were to strike out, "this", on the fourth
16 line, and on the fifth line, the words "section shall not
17 authorize", change the "e" in employees to upper case,
18 strike out the word, "to", on the sixth line and insert,
19 "are not", so it would read, "Employees of the State of
20 Maryland shall not engage in any strike against the State."

21 THE CHAIRMAN: Delegate Malkus, that is made as

1 a suggestion. Will you respond to it?

2 DELEGATE MALKUS: Mr. President, I certainly
3 would accept the amendment, because that is what I intended
4 it to do.

5 THE CHAIRMAN: Is there any objection to
6 modifying the amendment in the manner indicated?

7 The Chair hears none. In Line 4, strike the
8 word, "this", in line five, strike the words "section shall
9 not authorize", in Line 5, make the "e" for employees
10 Capital; in Line 6, strike the word "to" and insert the
11 words, "Shall not".

12 The amendment as thus modified would read:

13 "Employees of the State of Maryland shall not
14 engage in any strike against the State."

15 Any further questions of the Sponsor?

16 Delegate Lloyd Taylor, you have time for one
17 very brief question.

18 DELEGATE L. TAYLOR: Delegate Malkus, do you
19 know that the State employees are not covered by the minimum
20 wage law as enacted by the Federal Government?

21 THE CHAIRMAN: Delegate Malkus.

1 DELEGATE MALKUS: Mr. President, I know that but
2 the State employees have an organization known as the
3 Classified State Employees, and they have one of the finest
4 lobbyists and most successful lobbys in the General Assembly
5 of Maryland, along with the Schoolteacher's lobby.

6 THE CHAIRMAN: Delegate Taylor.

7 Delegate Malkus, time has expired.

8 Any Delegate desire to speak in opposition to
9 the amendment?

10 Delegate Kiefer.

11 DELEGATE KIEFER: No, sir.

12 THE CHAIRMAN: Any other Delegate desire to speak
13 in opposition?

14 Delegate Scanlan.

15 DELEGATE SCANLAN: Again, let me say that I am
16 in sympathy with any amendment that would make it perfectly
17 clear that the General Assembly of this State retains the
18 power to regulate strikes in public, upon the part of public
19 employees and indeed on the part of publicly affected
20 industries. The problem that has arisen today as a result
21 of Amendment 21 is we are embarked on writing a little

1 Wagner Act and a little Taft-Hartley Act on the floor of
2 this Convention. It has been a long dreary afternoon. I
3 think it all stems from our initial mistake in enacting
4 Amendment Number 21. Let me make it perfectly clear, I
5 think the law is well settled, that the right to organize
6 and bargain collectively is distinct from, although related
7 to, it is distinct from the right to strike. The latter
8 rate has been regulated by some States in their public
9 employees field, New York being a conspicuous example,
10 Condon versus Walden, or Reckefeller versus Travia, the
11 law puts certain restrictions on the part of the public
12 employees to strike. Nevertheless, in New York, the public
13 employees as well as private employees have the right to
14 bargain, to organize and bargain collectively. As I under-
15 stand Amendment Number 21 does not in any way affect the
16 power of the General Assembly to restrict or regulate the
17 right to strike; certainly, on the part of public employees,
18 and I suppose even on the part of employees in industry
19 affected with the public interest. A recent example on the
20 Congressional level was the Compulsory Arbitration Act
21 passed by the Congress by which the railroad employees were

1 required to arbitrate with the railroads. No union has
2 enjoyed for a longer time greater rights at collective
3 bargaining than the railroad employees. Nevertheless, the
4 Congressional power to regulate their right to strike under
5 certain conditions is perfectly clear and well established.
6 Similarly, the General Assembly of Maryland, which need not
7 proceed under the Interstate Commerce Clause but has plenary
8 power as the legislature may regulate the right to strike
9 in connection certainly with their own employees, employees
10 of the State and in industry affected with the public
11 interest. I see nothing in Amendment Number 21 that restricts
12 that right. Therefore, I regard Amendment Number 25 as
13 unnecessary, and perhaps as going too far because there
14 could be examples of where the General Assembly would want
15 to regulate or restrict the right to strike on the part of
16 some public employees, but not on the part of the others.

17 I submit that the General Assembly should be
18 entitled to retain that flexibility and I wish this
19 Convention would remember a cardinal reason that we forget
20 too often, or have forgotten too often in our deliberations,
21 the General Assembly of Maryland has plenary legislative

1 power and we don't have to write it into the Constitution
2 every time we take up a section.

3 THE CHAIRMAN: Any other Delegate desire to speak
4 in favor of the amendment?

5 Does any Delegate desire to speak in opposition?

6 The Clerk will ring the quorum bell.

7 For what purpose does Delegate Hardwicke rise?

8 DELEGATE HARDWICKE: Mr. Chairman, I would like
9 to make one brief point against this amendment.

10 THE CHAIRMAN: You may speak.

11 DELEGATE HARDWICKE: In case this is adopted,
12 it appears to me as a matter of legal construction that the
13 fact that we would negative the right to strike in this one
14 instance might by implication and in my opinion would by
15 implication suggest the right to strike in all other
16 instances not negatived.

17 THE CHAIRMAN: The question arises on the adoption
18 of Amendment Number 25. A vote Aye is a vote in favor of
19 the Amendment. A vote No is a vote against. Cast your
20 votes.

21 Has every Delegate voted? Does any Delegate

1 desire to change his vote? The Clerk will record the vote.

2 There being 32 votes in the affirmative and 84
3 votes in the negative, the motion is lost. The amendment
4 is rejected.

5 Delegate Johnson, do you still desire to submit
6 your amendment AQ?

7 DELEGATE JOHNSON: Yes, Mr. Chairman.

8 THE CHAIRMAN: Pages will please distribute
9 Amendment AQ. This will be Amendment Number 26.

10 For what purpose does Delegate Ritter rise?

11 DELEGATE RITTER: A point of personal privilege,
12 Mr. Chairman.

13 THE CHAIRMAN: State the privilege.

14 DELEGATE RITTER: I would like to state for the
15 Delegates assembled here and the President, that the views
16 expressed by Delegate Scanlan were not those views of
17 railroad labor pertaining to the compulsory arbitration laws
18 that were just recently passed in Congress. They were merely
19 the views of Brother Scanlan and the American Association
20 of Railroads, not the Brotherhood of Railroad Trainmen,
21 which I represent, because our views are very much different.

1 THE CHAIRMAN: Amendment Number 26.

2 The Clerk will read the Amendment.

3 MR. QUILLEN: Amendment Number 26 to Committee
4 Recommendation Number R & P-1 by Delegates Johnson, Blair,
5 Burdette, Dorsey, Dukes, Grant, Harkness, Neilson, F. C.
6 Robey, Rollins, Rosenstock, Rybczynski, M. Smith, H. Taylor,
7 Wheatley, Hostetter, Hickman, Frederick, Murphy, Kahl,
8 Soul, Sosnowski, Kirkland, Linton, Bradshaw, Vecera, Rush,
9 D. Murray, C. Murray, Key, Ritter, Webb, Darby, Hutchinson,
10 Jett, H. Smith, Siewierski: On page 3, section 7. Right
11 to jury trial in civil cases, strike out all of line 41
12 through 44, inclusive, beginning with the word "t-h-i-"
13 in line 41 and extending through the word "verdict" in
14 line 44 and insert in lieu thereof the following:

15 "The jury shall consist of not less than 12.
16 The General Assembly may provide by law for a jury of not
17 less than 6 in the district court. A unanimous decision
18 of any jury shall be required to constitute its verdict."
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1 THE CHAIRMAN: The amendment has been submitted
2 by Delegate Johnson and seconded by numerous other Delegates.

3 The Chair recognizes Delegate Johnson to speak to
4 the amendment.

5 DELEGATE JOHNSON: Mr. Chairman, if you would
6 permit, I should like to read the names of some additional
7 Delegates who wish to co-sponsor this amendment. May I do
8 so?

9 THE CHAIRMAN: I am sorry, would you say it again,
10 Delegate Johnson.

11 DELEGATE JOHNSON: I would like to read the names
12 of some additional Delegates who wish to co-sponsor this
13 amendment. I would like to so record their names.

14 THE CHAIRMAN: Very well.

15 DELEGATE JOHNSON: Delegates Hostetter, Hickman,
16 Frederick, Murphy, Kahl, Siewierski, Soul, Sosnowski,
17 Kirkland, Linton, Bradshaw, Vecera, Rush, Dorothy Murray,
18 Churchill Murray, Key, Ritter, Webb, Darby, Hutchinson,
19 Jett, Hodge Smith -- if we could have him raise his hand.

20 THE CHAIRMAN: Delegate Borom, for what purpose
21 do you rise?

1 DELEGATE BOROM: I move the previous question.

2 THE CHAIRMAN: Delegate Johnson, you may speak
3 to the amendment.

4 DELEGATE JOHNSON: Mr. Chairman and Fellow Dele-
5 gates, may I call to your attention that under Section 5,
6 Rights of the Accused, while guaranteeing a twelve-man jury
7 to the wrongly accused, to the wrongly only accused, this
8 Committee has also granted a twelve-man jury to the most
9 hardened and unconscionable criminal. Under the same
10 section, namely Section 5, Rights of the Accused, while
11 correctly granting the right of a twelve-man jury to an
12 individual accused of murder, it also impliedly granted the
13 right of jury trials to an individual, who is the recipient
14 of a parking ticket.

15 If you really believe, as I do, and as I am
16 certain the sponsors of this amendment do, that the twelve-
17 man jury is such a cherished right, that there isn't a law
18 abiding citizen entitled to the same right.

19 I call to your attention that the section under
20 amendment, or the amendment that is before you for
21 consideration, Section 7, correctly guarantees civil jury

1 trials.

2 The question is, what will the Constitutional
3 minimum guarantee be.

4 Under Section 7, as you have it before you, you
5 will note that the Majority Committee states that juries
6 shall consist of not less than six. In effect, this will
7 permit the General Assembly the opportunity, perhaps not in
8 the immediate future but some time in the future, to set
9 all civil jury trials at six so that cases perhaps involving
10 hundreds of thousands of dollars will be decided by only a
11 six-man jury.

12 I submit to you Ladies and Gentlemen that if two
13 heads are better than one, then twelve minds should be better
14 than six.

15 I think it is very important to retain a twelve-
16 man jury on the Superior Court level for several reasons:

17 First of all, you will have the opportunity to
18 obtain a proper cross section of all people, all points of
19 view and all ethnic groups. You will be permitted to do
20 this by virtue of a twelve-man jury. You will not have the
21 same, and no one can argue that, you will not have the same

1 opportunity with a six-man jury. With a twelve-person
2 jury, you will have that much more experience with the
3 problems that the jury will be facing and you will, I sub-
4 mit, have an opportunity to evade the problem where there is
5 a jury leader, an individual who thinks that he knows some-
6 thing more than the other jury members do, and oftentimes
7 bulls the jury into making a decision that it would not have
8 ordinarily made had it not been for that one persuasive
9 member.

10 I am convinced that a majority of the Members of
11 the Personal Rights Committee meant to do just what this
12 amendment does, namely, I feel certain that they meant to
13 retain the twelve-man jury on the Superior Court level and
14 let the legislature have the permission to establish a six-
15 member jury on a lower court, namely, the District Court.

16 This suggested amendment merely details the
17 twelve-man jury right in the Constitution and makes it a
18 Constitutional guarantee.

19 All of the reasons given yesterday by that
20 outstanding conservative Delegate Clinton Bamberger in
21 support of the twelve-man criminal jury, I submit to you

1 are applicable, indeed very applicable to civil juries.

2 To the arguments of the jury trial slow justice,
3 I submit if you curtail juries you would be eroding the very
4 justice that you wish to secure. If speed in concern of
5 trials is your only concern, I submit it would take just as
6 long. You wouldn't save five minutes if you tried a case in
7 front of a six-man jury or if you tried a case in front of
8 a twelve-man jury. It would still require opening statements,
9 it would still require instructions by the Judge to the jury,
10 and it would still require closing arguments.

11 Let me point out to you what this amendment does
12 not do. For those of you who are concerned about the
13 possibility of having jury trials on the District Court level,
14 let me say that there may or may not be jury trials on the
15 District Court level, regardless of what we do with this
16 amendment. This does not guarantee that there be jury trials
17 on the District Court level, but it does provide that if the
18 legislature should adopt jury trials on the District Court
19 level that the legislature in its wisdom may reduce that
20 number to six.

21 I point out that this amendment is not reducing

1 the number of jurors on the Superior Court level, whereas
2 the Majority Report does in fact open that opportunity.

3 I appeared before this Committee on several
4 occasions and I have urged many, many amendments. I have
5 not considered this Committee to adopt any amendment. I
6 wanted to tell you that it is my opinion that for years
7 insurance companies, their representatives and lobbyists
8 have been attempting to eliminate jury trials in civil cases.
9 I am sure that you will agree with me that this is an
10 undemocratic principle and you can imagine the blow that
11 this would cause jurisprudence in the State of Maryland.

12 For all of the reasons given, I urge you to
13 adopt this amendment.

1 THE CHAIRMAN: Any Delegate desire to speak
2 in opposition?

3 Delegate Kiefer.

4 DELEGATE KIEFER: Mr. Chairman, ladies and
5 gentlemen of the jury, I have to rise in opposition to
6 this amendment, and I urge the rejection for this reason:
7 There was nothing sinister in what the Committee on
8 personal rights did in this matter. It is no attempt
9 by the Committee on personal rights to limit or in any
10 way hold up any kind of action on the jury system in
11 civil cases. We specifically made no reference to, and
12 are not relating this provision to the district court or
13 to any other court. All we simply did was to provide
14 jury cases in civil matters shall be available to all,
15 depending upon the jurisdictional amount to be set by
16 the legislature because obviously any fixed amount could
17 become out of date in any given period of time. We
18 thought that there would be cases and situations where
19 the legislature might uniformly want to establish a jury
20 of less than twelve. It could have well been in a district
21 case. It might not be. It might not be at all. I

1 would much prefer personally for you simply, if you want
2 a jury of twelve, on civil cases, just say twelve and let
3 it go at that.

4 I would oppose this kind of language. It
5 simply confuses the issue. We had no reference to any
6 particular set of courts. I think it is not helpful.

7 I would, therefore, urge that you reject this
8 amendment, and if you want to increase and make firm
9 the number of jurors in civil cases, just say twelve
10 and let it go at that.

11 THE CHAIRMAN: Any other Delegate desire to
12 speak in favor of the amendment?

13 Delegate Marvin Smith.

14 DELEGATE MARVIN SMITH: Mr. Chairman, I
15 thought the amendment was rather clear. I think there
16 were some of us who have looked forward to the possibility
17 that in the district court there might be juries of six
18 to dispose of some matters that perhaps are not worthy of
19 going all the way to the superior court, but I believe
20 that in the matters of substance, that it is contemplated
21 that the superior court will handle, that we should have

1 the guarantee of a twelve-man jury, and this is what this
2 amendment provides.

3 THE CHAIRMAN: Any other Delegate desire to
4 speak in opposition to the amendment?

5 Delegate Child.

6 DELEGATE CHILD: Mr. Chairman, I don't want to
7 take up very much time. I merely was on the sub-committee
8 with Delegate Weidemeyer when we wrote this provision.

9 None of us know up to this date, and we
10 possibly won't know for a year from now, what the
11 jurisdiction of the district court will be. We thought
12 that maybe it might be assigned cases where juries would
13 be required.

14 We wrote this section giving the legislature
15 the right to reduce the number of jurors in the district
16 court, or in any other civil court, for reasons best
17 known to them, down to six.

18 I might say I have tried a number of civil
19 cases in Virginia and they have a civil jury down there
20 of seven, and it worked very well, but I am not urging
21 Maryland to adopt that.

1 I think the amendment does no particular harm.
2 Only I think it is unnecessary. I think the provision,
3 as we have written it, is just as good as the amendment,
4 and I think it is clearer than the amendment, and I would
5 urge that the amendment be defeated and that our section
6 stand as it is.

7 THE CHAIRMAN: Delegate Dorsey.

8 DELEGATE DORSEY: Mr. President, I feel that
9 this amendment simply guarantees to anyone in a civil
10 case that he will have twelve men try his case in the
11 superior court.

12 Now, yesterday this Committee sitting as a
13 whole guaranteed twelve men in criminal cases by
14 unanimous verdict.

15 Now, I really believe that this body wants
16 to do the same thing in the superior court in civil
17 matters. A man can be charged on information for assault
18 and battery, tried before a jury of twelve men, found
19 guilty and fined one dollar. For that same assault he
20 can be sued for a hundred thousand dollars or more. He
21 can be stripped of his home and all his property by a

1 verdict, but instead of having twelve men to try his case,
2 he will have to submit it to a jury of six if the legis-
3 lature so prescribes instead of a jury of twelve.

4 This simply guarantees that in the superior
5 court in all civil cases a person will have a right to
6 have his case submitted to a jury of twelve men.

7 THE CHAIRMAN: Any further discussion?

8 Are you ready for the question?

9 The Clerk will ring the quorum bell.

10 The question arises on the adoption of Amendment
11 No. 26. A vote Aye is a vote in favor of the amendment.
12 A vote No is a vote against.

13 Cast your votes.

14 Has every Delegate voted?

15 Does any Delegate desire to change his vote?

16 The Clerk will record the vote.

17 There being seventy-five votes in the affirmative
18 and forty-five in the negative, the motion is carried.
19 The amendment is adopted.

20 Delegate Beatrice Miller, do you still desire
21 to offer your Amendment V?

1 DELEGATE BEATRICE MILLER: No, Mr. Chairman.

2 THE CHAIRMAN: Thank you very much.

3 (Applause)

4 THE CHAIRMAN: At the request of the Chair,
5 Delegate Willoner has agreed to consider his minority
6 report and the amendment in support of it as withdrawn
7 as an amendment to Recommendation R & P1 with the
8 understanding that it will be submitted as a minority
9 report and amendment to Recommendation R & P2.

10 This will permit the Committee of the Whole
11 to act finally with respect to R & P1 before we adjourn
12 for dinner and enable us to get it to the Committee still
13 very promptly.

14 The Chair wants to thank Delegate Willoner
15 for his consideration and also Delegate Kiefer, Chairman
16 of the Committee for acquiescing.

17 Are there any other amendments to any sections
18 of Committee Recommendation R & P1?

19 The question now arises on the approval of
20 Committee Recommendation R & P1 as amended. A vote
21 Aye is a vote in favor of the approval of the recommendation

1 as amended. A vote No is a vote against.

2 Cast your votes.

3 Has every Delegate voted?

4 Does any Delegate desire to change his vote?

5 The Clerk will record the vote.

6 The Committee Recommendation R & P1 is
7 approved as amended with a vote of one hundred and
8 twenty-one affirmative and none in the negative.

9 The Chair can't but help refraining, adding
10 that this is a point he thought we would never reach.

11 The next item on the agenda is a consideration
12 of Committee Recommendation R & P2. The Chair desires
13 to make two announcements.

14 One, it has become quite obvious that the
15 debate is being prolonged by absence of members from the
16 chamber during the presentation and question and answer
17 period and during debate. I realize fully that these
18 proceedings are tedious, tiresome, and exhausting for
19 everyone. The only way we can possibly conclude quickly
20 is to stick to the task, be here during discussion and
21 debate, thereby make unnecessary repetition of questions

1 and reconsideration of previous actions.

2 The second announcement, which I am sure will
3 be more welcome to you, is that Delegate Kiefer has
4 indicated that he can and will make his presentation very
5 brief. He will answer all questions. Please keep your
6 questions confined to questions for clarification and not
7 for debate.

8 Delegate Kiefer.

9 DELEGATE KIEFER: Mr. Chairman, ladies and
10 gentlemen of the Committee, I will make this not only very
11 brief, but I have asked three of the four of the Committee
12 members to make specific comments on sections. I will
13 call upon them. I hope they will do it right from their
14 own place, and that they will be very brief.

15 I think very frankly that we can get on with
16 this. I am very proud of what this body has done with
17 respect to the Recommendation No. 1. There have been
18 few, if any, really important changes, one or two things
19 I wasn't quite happy with, but nevertheless, on the
20 whole, I think we have done a fine job. I appreciate it.
21 I appreciate more than ever the unanimous final vote, and

1 I say this on behalf of the Committee also.

2 Now, we had quite a group of proposals, as
3 you know. I think they covered the waterfront. In
4 addition to which, we had certain sections of the
5 present Constitution to consider, that is, certain
6 areas of the declaration of rights as well as other
7 sections.

8 What we have come up with here is somewhat
9 of a pixie combination, and I say that not facetiously
10 because the first six sections of this Recommendation No.
11 2 in effect refer to a form of government, or putting
12 together a kind of a government. The others refer to
13 specific issues. I do not propose to take very much
14 time. There are amendments that are to be offered with
15 respect to No. 1, Section 1 and Section 2.

16 Section 1 refers to the supremacy of the
17 Constitution of the United States. Section 2 refers to
18 reserve powers. Both of these sections are in the present
19 Constitution. They were put in there right after the
20 Civil War at a time of stress and strain, when this was
21 important. I don't believe they are particularly necessary.

1 We put them for your consideration.

2 An amendment will be offered so that you can
3 say yes or no to them without a whole lot of discussion.
4 I don't think we are going to add very much to anybody's
5 education by discussing them. This is simply to give
6 you an opportunity to decide whether or not you want
7 them in the Constitution.

8 I will give Delegate Child an opportunity to
9 discuss Section 3 and Section 5. He is not here at the
10 moment, but Section 3 is partly covered by general
11 provisions, Recommendation No. 9, and Section 6 by General
12 Recommendation No. 11.

13 I think Section 6 is the transitory provision,
14 and I understand there is an amendment that has been
15 shown to me that is perfectly acceptable. These are
16 just housekeeping items in a certain sense.

17 Section 7, having to do with the right to
18 sue the State and local governments, and Section 8 is
19 the right to remove civil cases.

20 Section 10 is criminal jury, judgment of the
21 law and fact.

1 Section 12 is the right of removal of criminal
2 cases. It will be discussed by Delegate Willoner.

3 Delegate Willoner, would you like to come
4 forward? Perhaps they could see you better. I might
5 say, while he is coming up here, Delegate Weidemeyer
6 will discuss, and I hope very briefly also, Sections 11
7 and 13.

8 Delegate Mitchell will discuss Section 9.

9 DELEGATE CLARK: Delegate Clark presiding.

10 Delegate Willoner.

11 DELEGATE WILLONER: I think I should first
12 discuss the right of removal. We have in the majority
13 report the right of removal as it is in the present
14 Constitution, for the purposes of civil trials and for
15 criminal trials, which include all felonies.

16 However, my report is predicated on a Committee
17 amendment that will come in later which will meet the
18 objections to the right of removal that have been raised
19 on our prior discussion of the right.

20 The right to removal in criminal cases will be
21 provided as it is in present Constitution under, I believe

1 it is, Section 8, Article 5. In any event, it is in the
2 judiciary article in the present Constitution. It was
3 the intent of the Committee to maintain this as an
4 absolute right in capital cases or the language we
5 used is life imprisonment, or cases punishable by death,
6 in the anticipation, I suppose, that we expect the
7 legislature to abolish capital punishment within the near
8 future.

9 In any event, we wished that to be an absolute
10 right. We feel it is something this body must decide. It
11 is an important right. It is a check on judiciary, or
12 I should say, is a check on the prejudice that one might
13 find in a serious case in a community as a result of
14 pre-trial publicity, but it would be exactly the same way
15 it is now, and it is not meant to change the present
16 state of the law at all.

17 The Committee amendment which we will propose
18 as far as civil trials is concerned will provide that the
19 right of removal in civil trials will not be absolute.
20 It will be a right of removal, but it will be subject
21 to the regulation by rule of the court of appeals, to

1 avoid those objections of those people who thought the
2 right had been abused.

3 The question might be raised why this should
4 be in the Constitution. It was in the Constitution, I
5 believe of 1805 or by way of constitutional amendment
6 proposed in the constitutional amendment of 1805. In
7 any event, it has a long constitutional history. It
8 has been changed at various times; in the Convention of
9 1851 it did apply to all criminal cases and that was
10 found to be abused, and I think the constitutional
11 amendment in 1875 allowed it only to be used in capital
12 cases.

13 I might point out that the interpretations
14 of the right of removal by court of appeals has been
15 extremely restrictive. It has prohibited the legislature
16 from providing the right in criminal cases when they did,
17 in fact, provide such a right. The Court of Appeals
18 said the provision was essentially, preempted the field
19 and could only be handled by way of constitutional
20 amendment, and all our right of removal is historically
21 based on constitutional amendment.

1 The concept that we intend to, or the concept
2 we are changing in the right of removal for civil cases,
3 is that it will be subject to reasonable regulation, and
4 it would allow, of course, it is not preemption of the
5 field as present Constitution and the legislature
6 would have concurrent powers and make what changes they
7 want in that particular section,

8 if they wanted to liberalize the right, not
9 that they could make it more restrictive or restrict the
10 right.

11 As to the juries of the trial of the law
12 in fact, that is a very interesting provision. I frankly
13 came down here opposed to what has been called the
14 constitutional thorn in the side of Maryland or something
15 to that effect until I began to do some reading on the
16 question, and it has a very fascinating history.

17 The right originally arose when in, I believe,
18 around 1690 in England the juries were no longer, although
19 this continued into Maryland. They had this taint of
20 juries. In other words, if a jury came in against a
21 judges instructions, the jury could be imprisoned for

1 finding against the instruction of the judge. This was
2 apparently felt to be harsh and was abolished.

3 Then, the question became since you could
4 only be found guilty by the jury, in other words, the
5 judge could not find you guilty if you chose a jury
6 trial or could not direct a verdict of guilty if, in
7 fact, the jurors had the right to disregard the judges,
8 the power to disregard the judge's instructions, did they
9 not have, in fact, the right and a debate arose about this.

10 There is a memorandum that has been found
11 pointing out that there was some confusion about this in
12 the Colonies, or I should say, in the Americas, when we
13 first began or after we wrote our original 1776
14 Constitution, but the practice generally in the United
15 States was that the jurors, in fact, did find the law and
16 that the judge was primarily a referee. He didn't have
17 very much to do with the trial at all.

18 I would like to, I must say, I was not too
19 well prepared to discuss / today as I thought we would
20 get to the right to know first, but I would like to read
21 you a quote from the Harvard Law Review, Line 52, Page

1 582.

2 No common law institution has more persistent-
3 ly served to dramatize the relationship of law and democ-
4 racy than has trial by jury. It is therefore not surpris-
5 ing that the American courts during most of the whole of
6 our history should have been confronted with the task of
7 making the English jury effectively responsive to the
8 demand of American democracy. The theory in fact, both
9 have made the task unavoidable. Theory as usual received
10 expression by Jefferson when he wrote "Were I called upon
11 to decide whether the people had best be omitted in the
12 Legislative or Judiciary Department, I would say it is
13 better to leave the matter in the Legislative. The
14 execution of the laws is more important than the making
15 of them."

16 If the theory of democracy thus demanded the
17 people through the juries should take an active part in
18 the administration of law, American jurors
19 were not slow to put the theory into practice. It was
20 well nigh impossible for the courts to disregard the
21 people's part in the execution of the laws when the foreman

1 of the jury, toughened by the frontier scepticism, returned
2 and announced to the judge that the jury wants to know
3 whether that what you told us when we first went out was
4 really law or whether it was only just your notion.

5 That, in fact, is sort of a history of the
6 background, that the jurors actually did decide such things
7 as admissibility of evidence, constitutionality of statutes.
8 As a matter of fact, John Adams, in quoting and approving
9 this rule, made a statement that the general rules of
10 law and the common regulations of society under which
11 ordinary transactions arrange themselves are well enough
12 known by their jurors. The great principles of the
13 Constitution are intimately known. They are sensibly felt
14 by everyone. It is scarcely extravagant to say they
15 are drawn in or imbibed with the nurse's milk and fresh
16 air.

17 However, the Supreme Court at one time approved
18 the rule, and development of this rule was very interest-
19 ing because it is a fight between the people's interest in
20 their awe and the power of the judge's desire for orderly
21 administration of the courts, and some of the cases are

1 fascinating.

2 For instance, one court was calling this the
3 most fundamental right of all American citizens, and
4 twenty years later it was calling it this archaic, ridicul-
5 ous, outmoded kind of justice.

6 It has been a fight between the people and the
7 courts, but apparently it has gone into, well, Maryland is
8 the only State with the exception of Indiana which has also
9 restricted the right, and we did fairly recently restrict
10 the right; and the major objections to this right have
11 been eliminated where the judges in criminal cases are now
12 allowed to determine the sufficiency of evidence.

13 Prior to that time the judges were unable to
14 establish a real criminal law in Maryland because a case
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1 could go to the jury without any evidence at all. It
2 was up to the judges, I mean, the juries alone to
3 determine what the law was so the practice now really
4 boils down to this: Jurors today in this country, or
5 in our State, a judge cannot direct a verdict even though
6 the evidence is uncontradicted, overwhelming, the jurors
7 must find a verdict of guilty.

8 Therefore, they do, in fact, have the power
9 to disregard the judge's instructions.

10 The question then becomes, do they have the
11 right. In the 1851 Constitution, when this point was
12 debated -- I think it was '51 or '67. I don't remember
13 which one, but in any event, when it was debated, the
14 reason it was put in was to bring a uniform practice
15 throughout the State because in some parts of the State
16 the jurors actually ruled on questions of evidence.

17 Therefore, what they wanted to do was to make
18 a uniform practice throughout the State so the debate,
19 whether we followed the English common law or the debate,
20 the Libel Act, or when the United States Congress was
21 debating the same issue and it put in this provision is

1 really irrelevant because the practice in Maryland is
2 clearer today because it is in our Constitution.

3 Now, as a practical matter, there are two
4 cases, one case involving a murder where the defendant
5 committed arson and in the course of the arson, he
6 burned a woman in a house. It is Green versus United
7 States. It is a very interesting case.

8 In that case, under the District of Columbia
9 law, they have the felony murder rule. We have the
10 same rule in this State. That is, if in the course of a
11 felony, if you commit, or if it occurs in the course of
12 a felony, a felony being arson, rape, robbery, burglary,
13 those crimes of common law which we call felonies, some-
14 body dies, even though he did have little connection with
15 it, it is first degree murder. In this Green case,
16 the defendant was found, an old man, I believe about
17 sixty years old, guilty of first degree or second degree
18 murder. He appealed. He said he could only be found
19 guilty of first degree murder because of the felony
20 murder rule. The Court of Appeals agreed. When he went
21 back for retrial, he raised double jeopardy claiming

1 he had been acquitted in the prior trial of first degree
2 murder and, therefore, could not be tried again, and he
3 walked out of the courtroom.

4 Under present practices in Maryland, this
5 cannot occur because juries quite often bring in
6 inconsistent verdicts.

7 In Prince Georges County, in a very famous
8 recent trial, we had the Hargus case, a woman who killed
9 four of her children. The only defense was insanity.
10 The facts were clearly first degree murder under definition
11 of the court. The jury came in and found her guilty on
12 four counts of manslaughter. She had killed all four of
13 her children. This would have been impossible under the
14 District law. She would have been acquitted. Therefore,
15 this rule doesn't have the practical effect even today.
16 We do still allow inconsistent verdicts.

17 The second thing is whether or not, as a
18 practical matter, the power is important and since we
19 do not allow special verdicts in criminal cases, in
20 other words, you do not direct a jury to bring back a
21 limited verdict and find certain facts, this does make a

1 certain amount of sense to keep this in our law.

2 The major Law Review articles, and our own
3 Judge Henderson wrote a Law Review article, where he
4 approved this particular doctrine except where the
5 practice had occurred when he gave his speech to, you
6 wouldn't say Law Review article because although it is
7 printed, he gave a speech to the Maryland Bar Association,
8 I believe, in Atlantic City, and it was very well received,
9 after the General Assembly had refused to propose a
10 constitutional amendment in 1946 on this particular
11 point. The complaints that he had in this particular
12 area were removed when the jurors were allowed, or the
13 judges were allowed, to determine the sufficiency of
14 the evidence.

15 Now, it boils down to really the situation
16 where you have inconsistent verdicts, where the juries,
17 in fact, disregard the instructions of the judge, and that
18 the attorneys are allowed to argue any law to a jury, that
19 is, as long as it is law, you can't object if there is
20 no such law. They generally have to cite cases. It is
21 said to be abused by the defense counsel, by the State. I

1 have seen it on occasion abused by defense counsel. I
2 have objected and had those objections sustained,
3 assuming there was no such law, and where law was clearly
4 erroneously given to the jury.

5 In any event, it seems to me and it seems to
6 the Committee that this historic right that we have had
7 for at least the last one hundred and fifty years in
8 Maryland should continue, and despite the fact that it
9 has fallen into some disuse in the other states, it is
10 important to continue in Maryland.

11 The other position, or the other point that I
12 am to give, is on the question of governmental immunity.

13 We had several proposals on that. I would like,
14 if you all remember, in our present Constitution we have
15 a clause that says all men are entitled to a remedy. I
16 wish I could find it very quickly to read it to you.

17 Essentially, it is Article 19 of the present Declaration
18 of Rights. It is beautiful language. Remedy for injury
19 to persons or property: That every man for any injury
20 done to him or in his person or property ought to have
21 remedy by the courts of the law of the land and ought to

1 have justice and right, freely without fail, fully without
2 any denial and speedily without delay, according to the
3 law of the land.

4 Now, this is the present language of our Maryland
5 Constitution. When we came to it, we liked the language,
6 but we found out that in a hundred years it hadn't meant
7 a thing and so we decided to give some meaning to the
8 language. We have come up with the proposal that
9 abolishes the governmental immunity. This is the doctrine
10 that grows up out of the old concept that the king can
11 do no wrong, and, in fact, we feel that in this day and
12 age, that we have no kings, that the sovereignty rests
13 in the people, not in a king.

14 The original concept was that all justice came
15 from the king, and if justice came from him, you couldn't
16 very well sue him. Well, we feel that this doctrine
17 has no application. However, it is limited. It is not
18 a dramatic change with the past in one sense because it
19 does provide for exceptions to be made by statute, and
20 this is done to avoid objections to it so that there can
21 be an orderly development.

1 In excess of thirty states have now abolished
2 governmental immunity, four by way of constitutional
3 provision. We feel it is an important right, and when we
4 wrote this bill of rights, we intended these things to
5 have justiciable meaning, to be justiciable provisions,
6 to have meaning. We took out the lovely language of
7 Article 19 and put in something that means something to
8 the people of Maryland.

9 In other words, this will spread across the
10 cost of injury, damages under the concept of the common
11 law as we as individuals are all liable for. This will
12 spread it across the cost, spread the cost across all
13 the citizens, and will prevent the horrible situation that
14 a single citizen has to pay for the wrong that the
15 whole State does.

16 That is essentially the provisions that I
17 am going to present. If there are any questions, I
18 would be glad to answer them within my rather limited
19 ability.

20 DELEGATE CLARK: Are there any questions of
21 Delegate Willoner?

1 The Chair recognizes Delegate Byrnes.

2 DELEGATE BYRNES: Delegate Willoner, did you
3 cover Section 4? I see nothing in the majority report.
4 That is on Page 2.

5 DELEGATE WILLONER: Section 4 is going to
6 be covered by someone else. I covered Sections 8, 7,
7 10, and 12.

8 DELEGATE CLARK: Any questions on the sections
9 covered by Delegate Willoner?

10 The Chair recognizes Delegate Bamberger.

11 DELEGATE BAMBERGER: Delegate Willoner, my
12 question is with respect to Section 7. Does this mean that
13 the General Assembly may waive the defense of immunity
14 for a county or municipality or any other political
15 subdivision?

16 DELEGATE WILLONER: I think it does apply to
17 all. The State is used in the broad sense to apply to
18 all municipalities. It isn't used in a restrictive sense
19 in the State of Maryland.

20 DELEGATE BAMBERGER: But it specifically says
21 that neither the State nor any political subdivision,

1 which, I take it, includes all of the counties and
2 municipalities, regional governments, and the other things
3 which we were discussing in the local government article.

4 DELEGATE WILLONER: Yes.

5 DELEGATE BAMBERGER: My question particularly
6 is the last phrase, the power to make these local units
7 of government subject to suit lies not in their governing
8 body, but in the General Assembly. Is that correct?

9 DELEGATE WILLONER: I wouldn't know the answer
10 to that. The intent is to eliminate this plea of
11 governmental immunity except that legislature can, if it
12 sees fit, take this right away.

13 DELEGATE CLARK: Delegate Bamberger.

14 DELEGATE BAMBERGER: Well, this says that
15 there is no longer a constitutional right of sovereign
16 immunity or at least it says by the Constitution, the
17 doctrine of sovereign immunity is revoked, except that
18 General Assembly may limit that revocation.

19 DELEGATE WILLONER: That is correct.

20 DELEGATE CLARK: Delegate Henderson.

21 DELEGATE HENDERSON: I don't want to get

1 into debate on this subject. I was thinking of this
2 same Section 7. Is it not true though that the legislature
3 has already repealed to some extent any doctrine of
4 sovereign immunity by providing that the defense should
5 not be depleted to the extent it is covered at present.

6 DELEGATE WILLONER: That is right.

7 DELEGATE HENDERSON: The legislature has
8 recognized this problem and dealt with it in its own
9 rather peculiar fashion. Does this constitutional
10 provision prevent the continuance of that relief?

11 DELEGATE WILLONER: Prevent?

12 DELEGATE HENDERSON: Yes.

13 DELEGATE WILLONER: This constitutional
14 provision is broader. The present rule is if you have
15 insurance, you cannot plead governmental immunity.
16 This question would be irrelevant now. You can't plead
17 governmental immunity whether you have insurance or
18 not. Is that what you are asking?

19 DELEGATE CLARK: Delegate Henderson.

20 DELEGATE HENDERSON: My question was whether
21 this constitutional provision would prevent the legislature

1 from dealing with this problem exactly as it has at the
2 present time.

3 DELEGATE WILLONER: No. It would not prevent
4 it from dealing with the problem as it has because it
5 could put such limitations on.

6 DELEGATE HENDERSON: Since the legislature has
7 recognized and dealt with this problem, why do you
8 want this provision in the Constitution? You are simply
9 saying the legislature may deal with it as it sees fit
10 and the legislature has seen fit.

11 DELEGATE WILLONER: We are trying to switch
12 the burden essentially, Judge Henderson, so that the
13 plea of governmental immunity no longer exists except
14 that in the future the legislature may limit that plea,
15 and the extent is clear.

16 Frankly, I suppose, at least some members of
17 the Committee feel that it should not exist at all anymore,
18 but to obviate those objections to the people who feel
19 that this would possibly open the floodgates, that we
20 should give the legislature a right to regulate this
21 elimination of governmental immunity.

1 DELEGATE CLARK: The Chair recognizes Delegate
2 Storm.

3 DELEGATE STORM: Mr. Willoner, was it your
4 assignment to cover most of the controversial items in
5 this GP-2?

6 DELEGATE CLARK: Delegate Willoner.

7 DELEGATE WILLONER: This may develop to be
8 the case.

9 DELEGATE CLARK: Delegate Storm.

10 DELEGATE STORM: It appears to me that your
11 Committee has done a complete job on this. Would you
12 object, and I don't know, I suppose I would have to ask
13 if anyone would object, if we couldn't just proceed and
14 adopt this entire recommendation as it has been given
15 and surprise our President when he comes back?

16 I think the Committee has done a terrifically
17 wonderful job on this. I had a few questions which you
18 answered in your presentation, and I know that there is
19 going to be some disagreement, but I hope that the
20 issues have already been decided in our minds, and I
21 was wondering if you would have any objection to our

1 proceeding in this fashion.

2 DELEGATE WILLONER: I would have no objection.

3 DELEGATE STORM: If you would give me the
4 courtesy of letting me present my freedom of information
5 article sometime before the Convention adjourns on
6 January 12.

7 DELEGATE CLARK: Delegate Storm, the Chair might
8 say that is a excellent idea, but the first step is for
9 people to stop asking questions.

10 The Chair recognizes Delegate Hargrove.

11 DELEGATE HARGROVE: Delegate Willoner, on
12 Section 10, did your Committee check with Judge Bruce's
13 Commission on the provision of criminal laws and procedures,
14 who has been studying this matter for the last couple
15 of years?

16 DELEGATE WILLONER: No.

17 DELEGATE HARGROVE: Would you be interested
18 in their conclusion, that the jury shall not be the
19 judge of the law as to what they concluded, that their
20 several years' of study has gone in that direction?

21 DELEGATE WILLONER: I am well aware of the

1 conclusion. I am not aware of the Judge's conclusion.
2 I would be interested in hearing it.

3 DELEGATE HARGROVE: That is the conclusion they
4 reached, without too much debate.

5 DELEGATE WILLONER: What?

6 DELEGATE HARGROVE: That the jury shall not
7 be the judge of the law in criminal cases. They
8 concluded that the criminal procedure and understanding
9 the law should proceed along those lines.

10 DELEGATE WILLONER: I would like to ask a
11 question. I talked to a couple of state's attorneys
12 about this and asked them whether they were aware of the
13 Green problem, the problem raised in Sharp versus
14 Hanson. That doesn't include Royce Hanson. Sharp
15 and Hanson versus United States is a murder case where they
16 prohibited an instruction in second degree murder where
17 the facts were undisputed. It was first degree murder.
18 It is an old case. It thoroughly discusses the whole
19 area. I found it rather shocking that you couldn't get
20 a manslaughter or second degree murder instruction.

21 And the Green case situation, was there

1 anything on that?

2 DELEGATE HARGROVE: We considered all those
3 cases, but we also considered the fact that a jury of
4 twelve people cannot learn the law in such a short period
5 of time, particularly if it is eloquently presented by
6 one side and not necessarily correct and not so well
7 presented by the other side.

8 DELEGATE WILLONER: My question is specific.
9 When you considered it, did you wish to abolish the
10 practice in Maryland that we have inconsistent verdicts,
11 that juries can bring in inconsistent verdicts.

12 DELEGATE CLARK: The Chair recognizes Delegate
13 Stern.

14 DELEGATE STERN: My questions go to Section
15 12 in which you use felony cases. Isn't it true that in
16 Maryland it is very difficult to determine what a felony
17 is and certain crimes which are felonies in other states
18 are not felonies in Maryland?

19 DELEGATE WILLONER: Delegate Stern, you
20 have the same problem that apparently the Chair referred
21 to of not listening carefully. I said there would be a

1 Committee amendment that would eliminate this felony
2 aspect and would provide for the right, the absolute
3 right, of removal only in capital cases punishable by
4 death or life imprisonment, and that would protect the
5 right we have today, just as it is today.

6 It is not meant to change the law one bit.

7 DELEGATE CLARK: Delegate Stern.

8 DELEGATE STERN: That is as to capital cases?

9 DELEGATE WILLONER: That is right. There
10 would not be any right of removal in other cases other
11 than absolute right of removal in other cases, except
12 in cases punishable by death or life imprisonment.

13 DELEGATE CLARK: Any further questions?

14 DELEGATE WILLONER: May I make an additional
15 comment? We have dropped out the rather detailed
16 language providing for the right of removal where it is
17 discretionary on the part of the judge where there is a
18 prejudice. This is in the present Constitution, and,
19 however, it is inherent, it seems to me, in line with the
20 Supreme Court cases in the area of fair trial, that the
21 courts can provide, and I am sure the courts provide by

1 rule for the right of removal where there is prejudice
2 actually established to the satisfaction of the court.

3 THE CHAIRMAN: Any other questions of the
4 minority spokesman?

5 The Chair hears none.

6 Delegate Child, do you desire to make a
7 presentation with respect to Sections 3 and 5?

8 DELEGATE CHILD: It occurred to me, Mr.
9 Chairman, that possibly a short presentation and then to
10 take these sections up one at a time. I believe we can
11 get along faster that way.

12 THE CHAIRMAN: That may save us some time.
13 We will take up for consideration Section 1
14 of R & P-2. Are there any amendments?

15 The Chair hears none.

16 The pages will please distribute Amendment M.
17 This will be Amendment No. 1.

18 The Clerk will read the amendment.

19 MR, QUILLEN: Amendment No. 1 to Committee
20 Recommendation No. R&P-2: On Page 1 strike out all of
21 Section 1 Supremacy of the Constitution of the United

1 States comprising Lines 7 through 19, inclusive.

2 THE CHAIRMAN: The amendment having been
3 submitted by Delegate Scanlan, seconded by Delegate
4 Moser, the Chair recognizes Delegate Scanlan to speak
5 to the amendment.

6 DELEGATE SCANLAN: Mr. Chairman, I will
7 be very brief.

8 My amendment proposes that we strike Section
9 1 which, in effect, would write into the Constitution
10 of Maryland the supremacy clause of the Constitution of
11 the United States.

12 I concede that a similar clause is now found
13 in our Constitution, our 1867 Constitution, but I submit
14 that there is some validity for its insertion in that
15 fatal, critical year when the memory of the most ferocious
16 assault on the supremacy of the Federal Union was fresh
17 on the mind of all Marylanders.

18 At that time, although the supremacy clause
19 existed in the Federal Constitution, although John
20 Marshall had gone a long way in establishing its full
21 implications, it was nearly shattered in the war between

1 the states. Therefore, there was considerable emotional
2 and historic validity and justification for inserting in
3 a state constitution a similar supremacy clause
4 acknowledging the supremacy of the Federal Constitution.

5 However, the historical reasons which justified
6 this insertion in 1867 no longer maintain. There is
7 no question it is settled beyond any doubt that the
8 provisions of the United States Constitution, when they
9 are in conflict with state constitutions or state law,
10 prevail.

11 The decisions on the point are legion. They
12 are unanimous. As I said, the doctrine is completely
13 settled.

14 I think the time has come for us all to put
15 a brake on inserting in the constitution unnecessary
16 provisions no matter how lofty the language of those
17 provisions. If we don't stop this process, I am not
18 overstating the case when I say that we will end up with
19 a Constitution to submit to the people in May which is
20 longer than the one that we came down here to modernize.
21 There is no necessity for this clause. It adds not

1 one whit of constitutional doctrine in this State or in
2 the United States. I urge its deletion.

3 THE CHAIRMAN: Any further discussion?

4 Delegate Kiefer.

5 DELEGATE KIEFER: Mr. Chairman, ladies and
6 gentlemen of the Committee, I do not rise to oppose or
7 to agree with this. I think that everything that Delegate
8 Scanlan said is quite pertinent.

9 We put it in because some members of the
10 Committee have been approached by other Delegates and
11 thought at least this Committee should have a chance
12 to vote on it. I don't think any discussion is necessary.
13 I hope to get right on with the voting.

14 THE CHAIRMAN: The Clerk will ring the quorum
15 bell.

16 Delegate Koss.

17 DELEGATE KOSS: I wonder if Chairman Kiefer
18 could give us some idea of why some Delegates felt it
19 important? Was it just an attachment to ancient
20 language or are there legal implications that some of
21 us might not be aware of?

1 THE CHAIRMAN: Delegate Kiefer.

2 DELEGATE KIEFER: Delegate Koss, as near as
3 I can understand, it was mostly sentimental, but Delegate
4 Bard is one of them. He may want to speak to it. That
5 is the only person I can think of offhand.

6 THE CHAIRMAN: Delegate Bard.

7 DELEGATE BARD: Mr. Chairman, I had not
8 desired to make a speech, but when called upon I will
9 briefly indicate why I felt that at that time it was
10 important.

11 The Federal concept is a bilateral concept,
12 one in which the United States Constitution makes clear
13 the relationship to the states, and I felt that in a
14 bilateral concept this should be done the other way
15 around.

16 Some of the recent constitutions have done
17 this. There are twenty-six constitutions that have
18 mention of the supremacy of the Federal Government.

19 I would merely add in closing that there have
20 been many occasions when we have debated this issue.
21 Though the matter of invasion has ended, this is certainly

1 true, Delegate Scanlan, the matter of whether we fully
2 agree in connection with the Federal Government's
3 supremacy has not ended, as I listen to a goodly number
4 of discussions that are going on, and I for one would
5 like to see it in, not for sentimentality, but because
6 the contract is bilateral.

7 THE CHAIRMAN: Are you ready for the question?

8 The question arises on the adoption of
9 Amendment No. 1.

10 A vote Aye is a vote in favor of the amendment.

11 A vote No is a vote against.

12 Cast your votes.

13 Has every Delegate voted?

14 Does any Delegate desire to change his vote?

15 The Clerk will record the vote.

16 There being one hundred and one votes in the
17 affirmative and sixteen in the negative, the motion is
18 carried. The amendment is adopted.

19 Delegate Scanlan, do you desire to offer your
20 Amendment N?

21 DELEGATE SCANLAN: Yes, I do, Mr. Chairman.

1 THE CHAIRMAN: The pages will please distribute
2 Amendment N. This will be Amendment No. 2.

3 The Clerk will read the amendment.

4 MR. QUILLEN: Amendment No. 2 to Committee
5 Recommendation No. R&P-2 by Delegates Scanlan and Moser:

6 On Pages 1 and 2, Section 2, Reserved Powers,
7 strike out all of Lines 21 through 24, inclusive, on
8 Page 1 and on Page 2 strike out all of Lines 1 and 2.

9 THE CHAIRMAN: The amendment having been
10 seconded by Delegate Moser, the Chair recognizes Delegate
11 Scanlan to speak to it.

12 DELEGATE SCANLAN: Mr. Chairman, for the
13 same reasons that I urged the deletion of Section 1, I
14 now urge the deletion of Section 2.

15 Section 2 as it now is offered by majority is,
16 of course, a restatement of the Tenth Amendment of the
17 Constitution of the United States. Again, I believe that
18 there was historical justification in the Convention of
19 1867 when the people who dominated the Convention for the
20 most part were sympathetic with the vanquished clause
21 because of the Confederacy and this, I believe, was a

1 compromise that they insisted upon, on the one hand,
2 the supremacy clause, and, on the other hand, the
3 Maryland version of the Tenth Amendment.

4 Again, Maryland, nor any other state, can
5 neither make nor mar the Tenth Amendment by anything that
6 we put in our Constitution. The Tenth Amendment will be
7 authoritatively interpreted by Supreme Court of the
8 United States. I must concede, and I think those of you
9 who are familiar with constitutional law will agree, that
10 for the most part in recent years at least, over the
11 last thirty-five or forty years, the Tenth Amendment
12 has been a rather forgotten amendment and does not seem
13 to have much power.

14 I believe Chief Justice Stone once referred
15 to it as the residual amendment, and I think that is a
16 true description of it. Whatever is not delegated to the
17 Federal Government, of course, it reserved to the states
18 and the people, and the Tenth Amendment states that
19 explicitly in the Federal Constitution, where it should
20 be stated.

21 We add nothing to that statement. We add not

1 one bit by way of extension or application or interpre-
2 tation of the Tenth Amendment by restating it in our own
3 Constitution, and as a companion deletion to Section 1,
4 I urge the deletion of Section 2.

5 THE CHAIRMAN: Delegate Kiefer.

6 DELEGATE KIEFER: Mr. Chairman, ladies and
7 gentlemen of the Committee, I must agree with what
8 Delegate Scanlan says.

9 However, there are members of the Committee
10 who felt that this was a right that perhaps ought to be
11 included. They may want to speak against the amendment.

12 THE CHAIRMAN: Any other Delegate desire to
13 speak in favor of the amendment?

14 Delegate Weidemeyer, do you desire to speak
15 in opposition?

16 DELEGATE WEIDEMEYER: Mr. President, I do.

17 THE CHAIRMAN: You may speak.

18 DELEGATE WEIDEMEYER: I saw the last amendment
19 railroaded through here because of Delegate Scanlan's
20 fine oratory, but in this instance, while I sat idly by
21 in the first instance, I am not sitting idly by now.

1 If we do not adopt this and we can give effect
2 to his amendment and take it out, because one might say
3 it is redundant, but if we do not put this concept in
4 our Constitution, then I say we have ignored our reason
5 for being here.

6 This is the Tenth Amendment of the Constitution
7 of the United States. It cannot hurt anybody except the
8 cost of printing this little paragraph, and if you
9 don't like this amendment, if you don't like it in the
10 Constitution of the United States, then you ought to tell
11 Congress so, but I think we ought to say to the people
12 of Maryland that we believe in the Tenth Amendment of
13 the United States and we reaffirm the Tenth Amendment of
14 the United States which says that all powers not delegated
15 to the Federal Government by the Constitution of the
16 United States, nor prohibited by the Constitution of the
17 United States to the state, are reserved to the states
18 and the people and it is under those reserve powers and
19 under this that we are now acting to write our Constitution.

20 I say it is very important in our concept and
21 our reason for writing this Constitution, that we so

1 clearly state it and reaffirm the Tenth Amendment of the
2 United States by a language including it in our document
3 and show our people of Maryland what we are acting on.
4 We are acting on those reserve powers stated by this
5 Section 2. Let's let our people know and let ourselves
6 know why we are here. I am opposed to the amendment.

7 THE CHAIRMAN: Any other Delegate desire to
8 speak in favor of the amendment?

9 Any other discussion?

10 Are you ready for the question?

11 The Clerk will ring the quorum bell.

12 The question arises on the adoption of Amend-
13 ment No. 2. A vote Aye is a vote in favor of the
14 amendment. A vote No is a vote against.

15 Cast your votes.

16 Has every Delegate voted?

17 Does any Delegate desire to change his vote?

18 The Clerk will record the vote.

19 There being eighty-six votes in the affirmative
20 and thirty-one in the negative, the motion is carried.

21 The amendment is adopted.

1 Delegate Scanlan, do you desire to offer
2 your Amendment O?

3 DELEGATE SCANLAN: While the dice are
4 hot, I might as well go.

5 THE CHAIRMAN: The pages will distribute
6 Amendment O.

7 DELEGATE KIEFFER: Mr. Chairman.

8 THE CHAIRMAN: Delegate Kiefer.

9 DELEGATE KIEFFER: Mr. Chairman, do these have
10 numbers?

11 THE CHAIRMAN: The amendment that is now being
12 distributed will be Amendment 3. The others were one
13 and two, respectively. This will be Amendment 3.

14 The Clerk will read the amendment.

15 MR. QUILLEN: Amendment No. 3 to Committee
16 Recommendation No. R&P-2 by Delegates Scanlan and Moser:

17 On Page 2 strike out all of Section 3
18 Separation of Powers comprising Lines 4 through 11,
19 inclusive.

20 THE CHAIRMAN: The amendment having been
21 submitted by Delegate Scanlan, seconded by Delegate Moser,

1 the Chair recognizes Delegate Scanlan to speak to the
2 amendment.

3 DELEGATE SCANLAN: This might not be good in
4 a dice game, but I am handing over the dice to my
5 co-sponsor, Delegate Moser.

6 THE CHAIRMAN: The Chair recognizes Delegate
7 Moser.

8 DELEGATE MOSER: Mr. Chairman, I appreciate
9 the confidence of my co-sponsor.

10 This provision we think is not adequately taken
11 care of by provisions already adopted in the judicial,
12 legislative, and executive branches. Moreover, it has
13 some serious flaws in it, as recognized by the majority
14 report in discussing it. These flaws relate to the
15 problem of administrative agencies which exercise legis-
16 lative and judicial powers and this provision might be
17 construed by its adoption as rendering this unconstitutional.

18 There is a companion piece, I think, which the
19 General Provisions Committee may be recommending, which
20 does something similar to that, and a section to remedy
21 this defect.

1 However, it doesn't remedy a second defect
2 which is in this, and that is one in the local government
3 area.

4 One of the things that is contemplated by
5 the local government article is that each unit, or
6 rather each county, in adopting the home rule charter,
7 may provide for a combined legislative and executive
8 unit. That is, a county council may exercise both
9 legislative and executive functions.

10 I have never thought of this before, but it
11 is quite likely that Wicomico County's County Council
12 may well be unconstitutional since this is a carry over
13 from the existing Constitution, and would as it reads
14 literally prohibit that type of arrangement. For these
15 reasons, we recommend that this be deleted.

16 THE CHAIRMAN: The Chair recognizes Delegate
17 Child.

18 DELEGATE CHILD: Mr. Chairman, I would oppose
19 the amendment because I think that this provision, which
20 is now Section 8 of our present Constitution, should
21 remain where it is.

1 It was in the Constitution of 1776, 1851,
2 1864, and is in our present Constitution.

3 Now, we have said here in adopting our
4 various executive, legislative, and judicial branches,
5 that the executive department shall be vested in a
6 Governor, the legislative in the General Assembly, the
7 judicial in the four-tier court system, but nowhere
8 have we said that the Governor can't be the Chief Judge
9 of the Court of Appeals, and this is exactly what that
10 section says, that one section of the government, that
11 is, one part of the government can't exercise the functions
12 of the other branch.

13 The whole system of our government is a
14 system of checks and balances, one against the other, and
15 if we combine them, I think we are getting into serious
16 trouble, and we shouldn't do it. I think that this is
17 a fair constitutional provision. It should stay in there.

18 It has been the subject of a long line of
19 decisions of the Court of Appeals. It has one, I believe,
20 in 229 Maryland, and I oppose the amendment. I think
21 it is almost, or it is the right of the people to know

1 what section or what part of the government they are
2 dealing with, and that they are not dealing one with the
3 other.

4 THE CHAIRMAN: Delegate Boileau.

5 DELEGATE BOILEAU: Mr. Chairman, I desire to
6 speak in favor of the amendment.

7 Another section with which we would bring
8 about a built in conflict is the very end of Section
9 4.10, already adopted, powers and duties of the successor
10 to the Governor and there it says when the president of
11 the senate serves as acting Governor, he shall continue
12 to be president of the senate, but during his service
13 as acting Governor his duties as president shall be
14 performed by such person as the senate shall select.

15 When the Committee discussed this, it was noted
16 that we didn't want to put a president of the senate
17 who would be indeed acting Governor for an hour or a
18 day or some period of time less than that which would
19 result in his becoming permanent Governor of the State
20 for the remainder of the term, that we didn't want to
21 deny him his seat in the Maryland Senate, and as I said

1 earlier, this section, Section 3, would provide certain
2 built in conflicts that may put it in question.

3 THE CHAIRMAN: Any Delegate desire to speak
4 in opposition?

5 Delegate Marvin Anderson.

6 DELEGATE ANDERSON: Mr. Chairman, I feel that
7 before Delegate Scanlan's steamroller gets too far, we
8 had better stop and look and listen.

9 Forty states have a provision in their
10 constitution calling for the separation of the power. I
11 am not going to speak at length because I think it is so
12 fundamental, and with the number of lawyers in this
13 Convention, it seems to me a waste of time to even argue
14 the question.

15 You simply have to take a question or a
16 proposition that I like to cite and if you were to join
17 those powers together, the police officers would stop you
18 on the street, write you off a ticket, find you guilty,
19 and take you to jail.

20 I say that I have discussed this matter with
21 some other Delegates at various times and the only

1 reason they could give for it not being in the Consti-
2 tuion was that in the draft constitution it was set up
3 separately, but it doesn't say that it has to be set up
4 separately, and I think we certainly want to keep the
5 main functions of our government separate and distinct,
6 and I would strongly urge that we vote against this
7 amendment.

8 THE CHAIRMAN: Delegate Henderson.

9 DELEGATE HENDERSON: Mr. Chairman, fellow
10 Delegates, I should like to speak in favor of the amendment.

11 This proposition of the absolute separation of
12 powers has never been true in history. It started out,
13 I suggest, with the Frenchmen's misconception of what the
14 British Parliament was. I don't need to go into this. I
15 mean, we all know that when the Governor vetoes a bill,
16 he is exercising legislative power. There are literally
17 dozens of examples where the powers are not completely
18 separate and never have been, and it is a very misleading
19 thing and may lead to the kind of thing, by putting it
20 in the Constitution, you set up an impossible test,
21 which has been disregarded in the past and probably

1 would be in the future, but it is extremely confusing,
2 particularly when you get into the administrative fields
3 and you try to rigidly separate the three powers. You
4 find immense difficulty.

5 Now, under this system we have as far as
6 possible, I think, by spelling out the powers and functions
7 of the three separate departments, we have separated
8 those powers as far as is practicable, but to put this
9 provision in the Constitution, continue it there, I
10 think would be a great mistake.

11 THE CHAIRMAN: Delegate Weidemeyer.

12 DELEGATE WEIDEMEYER: Mr. President, Members
13 of the Convention, I oppose this amendment because it
14 strikes out of our Constitution one of our fundamental
15 concepts, namely, the separation of power, and I am not
16 at all convinced by the argument of those who say that the
17 legislature's powers are defined clearly in their area,
18 and the Governor's powers and the executive's are defined
19 clearly in theirs, the judiciary's are defined clearly in
20 theirs.

21 Wherever the judiciary is given appointed

1 powers, it is specifically mentioned in the Constitution,
2 but beyond those clearly mentioned functions of the main
3 branches of our government is this concept of the
4 separation of powers, and even though the judges' duties
5 are defined in there, I don't want him going out and
6 passing laws, and I don't want the legislature arresting
7 people, and I don't want the other branch of government
8 overstepping, other than what we have clearly provided
9 in the Constitution.

10 Now, maybe this as we have it in our report
11 is not clearly and fully expressed, but GP-11
12 Recommendation goes into that and recognizes the concept
13 of the separation of powers of government and it also
14 recognizes that the legislature in setting up adminis-
15 trative boards and agencies may provide for powers
16 providing in so doing it provides for due process and
17 judicial review.

18 We have to look back over the history of
19 legislative enactments to set up administrative boards
20 and commissions, but in setting up those boards and
21 commissions most always they are the providers for

1 administrative review of the actions of that co-mingled
2 board or they provide for judicial review.

3 The reason they provided for administrative
4 review or judicial review is in view of this prohibitive
5 language. That is where they have gotten around it.
6 No one raised the point. I don't want to take this out
7 and say to them that the green light is on, you can
8 invade any other department of government irrespective
9 of the constitutional provisions, and if you defeat this,
10 if you grant this amendment striking this out, I hope that
11 when you come to GP-11 that you will carefully consider
12 it and that you will at least pass that.

13 THE CHAIRMAN: Delegate Willoner.

14 DELEGATE WILLONER: Mr. Chairman, Article
15 3, Section 60 of the present Constitution, provides that
16 the General Assembly shall have the power to provide
17 by suitable general enactment for the suspension of
18 sentence by the Court in criminal cases and for any form
19 of indeterminate sentence and for release upon parole,
20 et cetera.

21 The reason for the provision -- I don't think

1 I can say anybody has researched behind every provision
2 in the Constitution, but the history behind this
3 particular provision was for the purpose of getting
4 around the separation of powers. In other words, this
5 is apparently considered to be executive power exercised
6 by the court. Yet today we figure it almost universally
7 as part of the judicial power. It seems to me there is
8 a lot of jokers in this particular provision.

9 We set it up within the framework. We may have
10 set up the legislative department, executive department,
11 and judiciary. That is where we get our separation of
12 powers, and not in this language that has been set up
13 in this particular provision.

14 I might also point out that en masse, and
15 these questions, as I said, were raised in the Committee
16 and never answered en masse. There were prevented
17 appeals and they had to require constitutional amendments
18 to determine whether or not a statute was constitutional
19 or to interpret statutes. It is a crazy provision and
20 has given a lot of problems and has been observed more
21 than it needs observance.

1 THE CHAIRMAN: Delegate Pullen.

2 DELEGATE PULLEN: Mr. Chairman, I am not sure
3 whether you are talking in opposition. I want to be
4 in opposition.

5 THE CHAIRMAN: You may speak.

6 DELEGATE PULLEN: I would like to read a
7 political statement upon which our founding fathers put
8 this in to the Constitution, and I think that it should
9 stay there. This is from Montesquieu, 1748.

10 "The political liberty of the subject is a
11 tranquility of mind arising from the opinion each person
12 has of his safety. In order to have this liberty, it is
13 requisite the government be so constituted as one man need
14 not be afraid of another.

15 When the legislative and executive powers
16 are united in the same person, or in the same body of
17 magistrates, there can be no liberty; because apprehension
18 may arise, lest the same monarch or senate should enact
19 tyrannical laws, to execute them in a tyrannical manner.

20 Again, there is no liberty, if the judicial
21 power be not separated from the legislative and executive.

1 Were it joined with the legislative, the life and liberty
2 of the subject would be exposed to arbitrary control; for
3 the judge would then be the legislator. Were it joined
4 to the executive power, the judge might behave with
5 violence and oppression."

6 I state my objection to a statement by he who
7 said, he only earns his right to freedom and existence
8 who daily conquers them anew.

9 I think this is a matter of historical develop-
10 ment of the rights and liberties of democratic people.
11 I am not concerned with the hypocrisies of the law.

12 THE CHAIRMAN: Any further discussion?

13 Delegate Macdonald.

14 DELEGATE MACDONALD: Mr. Chairman, I rise to
15 support the amendment. I can state from personal
16 experience that this amendment is contrary to the
17 governmental structure in Montgomery County, and the
18 structure that they had since late 1948.

19 Under the charter in Montgomery County, the
20 executive and the legislative branches are combined. The
21 County Council is the executive and it is also the

1 legislative branch.

2 This is in accordance with good municipal
3 practice. This is the governmental structure which is
4 recommended by the National Municipal League. It is a
5 governmental structure which is practiced throughout the
6 United States in hundreds, if not thousands, of munici-
7 palities. Since we have mandated home rule under the
8 Constitution, and the various counties of this State will
9 be adopting their own charter, they certainly should be
10 at liberty to adopt the charter which embodies that
11 structure, and we shouldn't put an impediment in the way.

12 I support the amendment.

13 THE CHAIRMAN: Delegate Grant, do you desire
14 to speak in opposition?

15 DELEGATE GRANT: I desire to speak in opposition.

16 In 1776 by a margin of exactly one vote the
17 separation of powers doctrine was adopted for Maryland.
18 It is one of the most fundamental doctrines in the
19 American constitutional law.

20 Following up what Delegate Pullen said, I
21 only have to point out, when it is violated what results.

1 I think you know the case of the runaway agency. You
2 can't tell which agency is doing what to who, and that
3 is because an agency is established by the executive. It
4 exercises its own legislative capacity to issue rules and
5 exercises its own judicial capacity by holding hearings
6 and then revoking permits, and it literally defies you
7 to try to stop them.

8 As far as the County Commissioner form of
9 governmentation, there is a case of where you have a
10 legislative branch who enacts their own legislation.
11 They are the executive branch. They execute and catch
12 up, check up, on what they did themselves, and I think
13 you all know what has happened to Maryland as a result of
14 County Commissioner forms of government. It simply is
15 not sufficient to cope with it. I point out the third
16 thing that we came down here to strengthen each branch
17 of government, and the only way that we are guaranteeing
18 that one of the branches becoming strong will not try to
19 consume the other branch is to retain as a right of the
20 citizens in their declaration of rights that they shall
21 have a separation of powers between the three branches.

1 THE CHAIRMAN: Are you ready for the question?
2 Delegate Beatrice Miller.

3 DELEGATE BEATRICE MILLER: I have a question,
4 Mr. Chairman.

5 If we should defeat the amendment and adopt
6 the proposal, would it be possible to combine it with
7 GP-11 so there would not be two statements?

8 THE CHAIRMAN: I don't believe it would be
9 possible. It would be possible for the Committee of the
10 Whole. It would be possible for the Committee still
11 drafting an arrangement to combine any section that it
12 thought should be combined or to separate into two
13 sections any one section. I don't have GP-11 well
14 enough in mind.

15 Delegate Wheatley.

16 DELEGATE WHEATLEY: A question on that.

17 As I understand, before this vote is taken,
18 there will be no determination based on LB-11 which, I
19 feel, ~~deals~~ with a similar subject based on this vote whether
20 it goes one way or another. It is under separate debate
21 schedule and deals with essentially the same subject

1 matter.

2 THE CHAIRMAN: The vote on this section,
3 even if this amendment were adopted, would not preclude
4 action on Committee Recommendation GP-11. This is
5 action by the Committee of the Whole and not by the
6 Convention.

7 Delegate Kiefer.

8 DELEGATE KIEFER: Mr. Chairman, just one point
9 very quickly. I am a little bit disturbed about the
10 statement of Delegate Grant, though I favor his position
11 and will vote in opposition to this amendment.

12 I have spoken perhaps somewhat lately about
13 this section, but I do believe there are several sections
14 that are quite important. This is one of them. This is
15 the basic concept of government.

16 However, the Committee, in its recommendation,
17 made this recommendation as a separate one from what would
18 go in Section 1, the declaration of rights, because it
19 believes this belongs in the general provisions as
20 establishment of a governmental principle and not as a
21 part of personal rights section.

1 THE CHAIRMAN: The Chair is a little disturbed
2 about one thing that I don't recall well enough to have
3 any opinion. I would like to address this inquiry
4 jointly or successively to Chairman Gallagher of the
5 Committee on the Legislative Branch and Chairman Morgan,
6 Committee on the Executive Branch.

7 The Chair recalls that during deliberations of
8 each of those Committees there was under consideration
9 provisions which would have involved crossing over
10 between the various branches of government. I don't
11 recall whether in the Legislative Branch recommendations
12 which we adopted, or in the Executive Branch recommendations
13 which we adopted. This was definitely contemplated.

14 For instance, in the Legislative Branch
15 Committee there is a provision for redistributing
16 commissions and appointments by the Governor. Was it
17 contemplated that the Governor might appoint to that
18 Committee, which would be the legislative, a person
19 serving in the executive branch?

20 Delegate Gallagher.

21 DELEGATE GALLAGHER: Mr. Chairman, it was,

1 and as long as the person is not a popularly elected
2 officer, there is no objection to the Governor appointing
3 such a person.

4 THE CHAIRMAN: But this provision might
5 prevent it? By this provision I mean Section 3.

6 DELEGATE GALLAGHER: It could be argued, Mr.
7 Chairman, that it might prevent it, but I don't think
8 with any success because of the routine lack of recognition
9 of this doctrine in the past practices.

10 THE CHAIRMAN: Delegate Morgan, I think
11 there were similar problems in the Executive Branch
12 Committee in the final recommendations. Were there any
13 provisions which would be affected one way or another by
14 this section?

15 DELEGATE MORGAN: Possibly two provisions,
16 Mr. Chairman. There is one that gives the General
17 Assembly two years in which to make the initial
18 organization of the executive branch of the government,
19 and then if the General Assembly fails to do it within
20 two years, then the Governor is given authority to
21 accomplish that organization by an executive order,

1 and that executive order does not have to have the
2 approval of the General Assembly, and then under the
3 general reorganization powers of the Governor, while the
4 Governor is given power to initiate the plans by
5 executive order, and submit them to the General Assembly
6 during the first ten days of their session, they lie
7 before the General Assembly for fifty days and if they
8 are not disapproved by one or the other houses of the
9 General Assembly by the end of fifty days, why then they
10 become law and have the force and effect of law.

11 THE CHAIRMAN: Delegate Mudd, would the
12 provision in question, Section 3, have any bearing
13 upon the provisions in the judicial branch article
14 giving the legislature and the Court of Appeals concurrent
15 power in certain areas to adopt rules of procedure?

16 DELEGATE MUDD: It didn't occur to us in the
17 Committee, Mr. Chairman, as I recollect, since the
18 rulemaking power was thought of in connection with the
19 matters of practice and procedure, and the legislature
20 would be prescribing by law matters of substance.

21 THE CHAIRMAN: Very well. Any further

1 discussion?

2 Delegate Kiefer.

3 DELEGATE KIEFER: Mr. Chairman, I don't believe
4 that I personally would have objection to adding language
5 to this particular section to make it clear and still
6 establish the basic principles that we have in mind,
7 something like this: Unless otherwise provided in this
8 Constitution.

9 THE CHAIRMAN: Delegate Henderson.

10 DELEGATE HENDERSON: I would like to amplify
11 a little bit on what Chairman Mudd has said. It
12 seems to me that there are several areas in which this
13 might have an effect.

14 For example, in the redistributing cases
15 which the Court of Appeals is given authority to try and
16 in the passing on the disability of the Governor and, in
17 fact, even in the rulemaking power which has the force
18 and effect of law, it is certainly legislature and it
19 seems to me that there are a number of areas where this
20 thing crosses over between the three branches. If they
21 are to be literally separated, it might indeed invalidate

1 a lot of things we are doing here.

2 THE CHAIRMAN: Delegate Bamberger.

3 DELEGATE BAMBERGER: Will Delegate Henderson
4 yield to a question?

5 DELEGATE HENDERSON: Yes.

6 THE CHAIRMAN: Delegate Bamberger.

7 DELEGATE BAMBERGER: Judge Henderson, when we
8 are talking about provisions in the Constitution, aren't
9 we then talking about provisions of equal dignity and
10 so without even the words that Delegate Kiefer suggests,
11 a provision in the Constitution which says that the
12 powers shall be separate would not be or could not strike
13 down a provision of that same document which provided
14 for some intermix of those powers.

15 THE CHAIRMAN: Delegate Henderson.

16 DELEGATE HENDERSON: Well, that may well be
17 that you could construe everything to go but the simplest
18 solution to the problem I suggest is to leave out this
19 provision calling for the absolute separation of powers
20 which has never been true in any department.

21 I could give a dozen different illustrations

1 of it. The rulemaking power is given to all, practically
2 all the executive agencies, for example, and yet it has
3 the force of law within the field. That is just one
4 illustration, and I think it just confuses the issue to
5 put this old provision in, to repeat it in the present
6 Constitution.

7 THE CHAIRMAN: Any other Delegate desire to
8 speak in opposition to the amendment?

9 Delegate Adkins.

10 DELEGATE ADKINS: I would like to ask a
11 question, Mr. Chairman, of the Committee Chairman.

12 THE CHAIRMAN: Delegate Weidemeyer, do you
13 desire to ask a question or to speak?

14 DELEGATE WEIDEMEYER: I would like to ask
15 Delegate Henderson a question.

16 THE CHAIRMAN: Delegate Henderson, will you
17 yield to another question?

18 DELEGATE HENDERSON: I will.

19 THE CHAIRMAN: Delegate Weidemeyer.

20 DELEGATE WEIDEMEYER: Is it a reasonable
21 construction or reasonable to assume that a proper

1 construction of this could be that the separation of
2 powers doctrine is a general concept and applies to
3 all areas where the Constitution does not specifically
4 provide for crossing over? For example, in the judiciary
5 branch the Constitution provides some areas of cross
6 over. The executive branch and the legislative branch
7 provides for cross over powers, but where they are not
8 specifically provided for in the Constitution, the
9 separation of powers would prohibit the encroachment of
10 one major department on the other.

11 THE CHAIRMAN: Delegate Henderson.

12 DELEGATE HENDERSON: Well, even if I accept
13 your interpretation as on constitutional powers, if this
14 were literally interpreted, it would invalidate hundreds
15 of laws in which the legislature has delegated to one
16 agency or another powers that are both legislative,
17 judicial, and, in other words, complete separation of
18 powers is simply not true. It is not followed. It
19 isn't done.

20 One example was for years the Tax Commission,
21 for example, heard appeals, and it also was an

1 administrative agency in the executive branch, and it is
2 true that the Tax Court has separated that out, but that
3 existed for years by act of the legislature.

4 THE CHAIRMAN: The discussion during the last
5 twenty-eight minutes indicates the absolute impossibility
6 of estimating how long it will take to dispose of any
7 particular question. There are three people seeking the
8 floor. I think we should postpone further discussion
9 until after dinner hour.

10 The Chair recognizes Delegate Powers.

11 DELEGATE POWERS: Mr. Chairman, I move the
12 Committee of the Whole rise and report the approval of
13 Committee Recommendation No. PR-1, with amendments, and
14 further report that it has not completed its consideration
15 of Committee Recommendation R&P-2.

16 THE CHAIRMAN: All in favor signify by saying
17 Aye; contrary No. The Ayes have it. It is so ordered.

18 (The mace was replaced by the Sergeant at Arms.)

19 (Whereupon, at 6:30 p.m., the Committee of
20 the Whole arose, and the Convention reconvened.)

21 THE PRESIDENT: The Convention will please

1 come to order.

2 On behalf of the Committee of the Whole, the
3 Chair reports that the Committee has concluded its
4 consideration of Committee Recommendation R&P-1, that
5 it has approved Committee Recommendation R&P-1, with
6 amendments. Committee Recommendation R&P-1 and the
7 report of the Committee of the Whole is referred to the
8 Committee still drafting an arrangement. On behalf of
9 the Committee of the Whole, the Chair further reports
10 that it has under consideration Committee Recommendation
11 R&P-2, that it still has it under consideration and desires
12 leave to sit again.

13 The Chair thinks it is necessary to make
14 another brief announcement.

15 The officers of the Convention are very much
16 concerned and troubled by the fact that in the past few
17 days we have fallen far behind our schedule, and progress
18 has been slower than perhaps on any other article. It
19 seems at the moment that it would be impossible to
20 conclude consideration of all matters on the agenda by
21 the close of the session tomorrow.

1 In view of the fact that the Convention has
2 a deadline beyond which it cannot go, and in further view
3 of the fact that in a little more than a week Christmas
4 is upon us, it is the intention of the officers to
5 continue the sessions of the Convention without recess
6 of any kind until we conclude consideration of every
7 matter presently on the agenda. This means complete
8 consideration of all matters that must be completed by
9 the Committee of the Whole. At the same time, we are
10 most anxious to be able to recess the Convention at least
11 a few days or more and few days before Christmas because
12 it is absolutely imperative that the Members of the
13 Convention who serve on the Committee still shall be
14 drafting an arrangement, and the Members of the Convention
15 who are trying to draft the transitional provisions in
16 the schedule of legislation must have at least two or
17 three days of uninterrupted time to work on those
18 particular tasks.

19 In order to accomplish all of these objectives,
20 therefore, the Chair urges all Delegates to remain in the
21 room at all times throughout the debate, except when it

1 is absolutely necessary for you to leave. I assure you
2 from the position of the Chair that when you absent
3 yourself during debate or questions, debate is prolonged
4 because you can return and you are not familiar with what
5 has been said and it leads to other questions and unnecessary
6 debate.

7 In addition, much as I regret to suggest this
8 because I firmly believe that it is well nigh impossible
9 for any group of people to work harder or more continuously
10 than this group is. I think we shall have to steel
11 ourselves to the prospect that the sessions will begin
12 earlier, will continue later, and that we shall have to
13 work day and night until we conclude the agenda.

14 It would, therefore, be the intention to
15 continue the session this evening until 10:30 or later
16 if there is a matter under consideration. Consideration
17 will be given during the dinner hour whether to begin
18 tomorrow's session at 9:30, but in any event, it obviously
19 will be necessary to have a session tomorrow evening.

20 If we do not conclude before Friday evening, it
21 seems to me obviously necessary that we have a session

1 Friday evening.

2 I regret very much that this is necessary, but
3 I am sure all of you will realize the absolute necessity
4 for it. Unless we can conclude consideration of all of
5 these matters in time so that we can all take a breather,
6 take a good hard look at what has been done and let
7 these two committees work uninterruptedly on matters
8 which they must consider quietly, we are bound to end up
9 in a mad rush at the very end, and that is the result
10 that I am sure everyone desires to avoid.

11 I don't want to give you the slightest
12 indication that the Chair feels that the debate has
13 been unnecessary. These are troublesome matters. They
14 are difficult matters, and they are matters as to which
15 many questions naturally arise. I simply ask your
16 continued, even greater, cooperation to the end that we
17 may accomplish our purpose. The Chair recognizes Delegate
18 Gallagher.

19 DELEGATE GALLAGHER: Mr. Chairman, regretfully
20 I must call a meeting of the Committee on the Legislative
21 Branch for a quarter of eight this evening.

1 THE PRESIDENT: Delegate Boyer.

2 DELEGATE BOYER: Mr. President, I thought
3 your remarks were very appropo and on a point of personal
4 privilege, we feel Delegate Boyles and surrounding
5 Delegates back here would like to make a little
6 presentation to give to the Chair and hope the Chair will
7 accept it in the spirit with which it is given. I
8 would hope perhaps that the Chair would keep it in front
9 of the Committee.

10 THE PRESIDENT: I think it might be an
11 excellent idea to keep it right up front.

12 DELEGATE BOYER: We hope you would keep it
13 up there as a perpetual reminder to the Delegates of the
14 approaching season.

15 THE PRESIDENT: Do you suggest we get some
16 declarations and have a red ball and green ball hanging
17 from it?

18 DELEGATE BOYER: At your own risk, sir.

19 THE PRESIDENT: Thank you.

20 Any announcements by Committee Chairmen?

21 Delegate Gill.

1 DELEGATE GILL: May I suggest a name for the
2 gift?

3 THE PRESIDENT: Certainly.

4 DELEGATE GILL: Hope.

5 THE PRESIDENT: Very well. We will keep Hope
6 right on the desk.

7 Are there any other announcements?

8 (No response)

9 THE PRESIDENT: Any Delegates not present at
10 roll call may indicate their presence now in supplementary
11 roll call.

12 The Clerk will record the supplementary roll
13 call.

14 The Chair recognizes Delegate Powers.

15 I should have observed that consideration has
16 been given to shortening the dinner hour as we have the
17 luncheon hour, but this seems undesirable. It is difficult
18 enough to get dinner even in the hour and a half and
19 besides it has been suggested that Delegates are entitled
20 to one square meal a day.

21 Delegate Powers.

1 DELEGATE POWERS: Mr. President, I move we
2 recess until 8:15.

3 THE PRESIDENT: All in favor signify by saying
4 Aye; contrary No.

5 The Ayes have it. It is so ordered.

6 (Whereupon, at 6:40 p.m., the Convention
7 was adjourned.)
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1 EVENING SESSION

2 December 13, 1967 - 8:25 p.m.

3 THE PRESIDENT: The Sergeant at Arms will clear
4 the aisles and close the doors.

5 The Convention will please come to order.

6 Roll call.

7 (Whereupon, the roll was called.)

8 THE PRESIDENT: Has every delegate answered
9 the roll call?

10 The Clerk will record the roll call.

11 For what purpose does Delegate Gallagher rise?

12 DELEGATE GALLAGHER: For a point of personal
13 privilege, Mr. President.

14 THE PRESIDENT: State the privilege.

15 DELEGATE GALLAGHER: Mr. President, there is
16 present in the gallery one of the judges in the Court of
17 Appeals in Maryland, the Honorable William J. McWilliams,
18 and I am sure the Chair would like to extend a welcome to
19 him on behalf of the whole Convention.20 THE PRESIDENT: We are delighted to have him.
21 (Applause.)

1 For what purpose does Delegate Bard rise?

2 DELEGATE BARD: For a point of personal pri-
3 vilege.

4 THE PRESIDENT: State the privilege.

5 DELEGATE BARD: I wish to announce the
6 presence in the gallery of members of the Johns Hopkins
7 University Class on Local Government. I hope we will all
8 welcome them.

9 THE PRESIDENT: We are delighted to have them.
10 (Applause.)

11 For what purpose does Delegate Sickles rise?

12 DELEGATE SICKLES: A point of personal privilege,
13 Mr. President.

14 THE PRESIDENT: State the privilege.

15 DELEGATE SICKLES: In the balcony we have, in
16 one of her infrequent visits, my wife, Simone, and two friends
17 from Montgomery County, Dr. and Mrs. Eig. The doctor is
18 the physician to at least two of the delegates from Mont-
19 gomery County. I know you will want to extend to them
20 an unusually warm greeting. (Applause.)

21 THE PRESIDENT: The first item for consideration

1 tonight on the agenda will be Item 9 on the agenda, con-
2 sideration of the report by the Committee of the Whole
3 on Committee Report EB-1. You will recall that Committee
4 Report EB-1 had five recommendations. The Committee of
5 the Whole Report with respect to each of them was that the
6 first recommendation, pertaining to a Board of Review,
7 be approved as amended; the second recommendation, pertain-
8 ing to the Office of Comptroller, be approved as amended;
9 the third recommendation, pertaining to the Office of
10 Treasurer, be approved as amended; the fourth recommenda-
11 tion, pertaining to the Office of Attorney General, be
12 approved as amended; and the fifth recommendation, per-
13 taining to Certain Other Officers, be approved.

14 The Chair's attention has been called to the
15 fact that it stated in error the recommendation of the
16 Committee of the Whole with respect to the third recommen-
17 dation of the committee being approved as amended. It
18 was approved as presented. It was not amended.

19 The question arises on the adoption of the
20 Report of the Committee of the Whole with respect to
21

1 Committee Report EB-1.

2 Is there any discussion? Are you ready for
3 the question?

4 The question arises on the adoption of the
5 Committee of the Whole Report with respect to Committee
6 Report EB-1. A vote Aye is a vote in favor of the report.
7 A vote No is a vote against.

8 Cast your votes.

9 Have all delegates voted? Does any delegate
10 desire to change his vote?

11 The Clerk will record the votes.

12 There being 91 votes in the affirmative and 2
13 in the negative, the Committee of the Whole Report with
14 respect to the adoption of Committee Report EB-1 is
15 approved.

16 Committee Report EB-1 as amended is adopted.

17 The next four items on the agenda are Reports
18 of the Committee on Style, Drafting and Arrangement with
19 respect to 4 committee recommendations.

20 The Chair recognizes Delegate Penniman to
21 present the Report of the Committee.

1 The first item for consideration is Report S&D-2
2 of the Committee on Style, Drafting, and Arrangement.

3 The Chair recognizes Delegate Penniman to
4 present the report.

5 DELEGATE PENNIMAN: The comments that I will
6 make apply to all four.

7 I would like to say that so far as the Committee
8 on Style is concerned, that it has sought to do three and
9 only three things. It has sought, first of all, to conform
10 with the decision of this body, the Committee of the Whole.

11 It has secondly tried to write a report which
12 would both be intelligible to the citizen who might read
13 the Constitution and which at the same time would be useful
14 to lawyers.

15 Finally, we have revised where it seemed to us
16 that shortening and clarifying could be done by such re-
17 vision.

18 I will make no statement, because I by contrast
19 with the other chairmen who have spoken to you, I hope
20 that what we have done is in itself self-explanatory.
21 This has been the purpose of our committee.

1 The particular item on No. 1 is the one which has
2 changed the word "duty" to "service," to conform in both
3 the early lines -- that is, line 9 to conform with line 19.
4 We have changed, as it said in the covering report, we
5 have said "military trial" rather than "military court"
6 in order to prevent any possibility of construing "military
7 court" as to suggest another court, rather than the four-
8 tier court which is provided for in Article V.

9 THE PRESIDENT: Under the procedure announced
10 earlier, the first amendments to be considered will be
11 limited to those concerned with matters of style. No such
12 amendments have been presented to the Chair. Are there any?
13 The Chair hears none.

14 Are there any other amendments with respect to
15 the section embraced in Committee Recommendation GP-1?

16 The Chair hears none.

17 The question first arises on the adoption of
18 the amendments to Committee Recommendation GP-1 proposed
19 by the Committee on Style, Drafting and Arrangement, and
20 reported in Report S&D-2. Is there any discussion?

21 Are you ready for the question?

1 A vote Aye is a vote in favor of the amend-
2 ments recommended by the committee. A vote No is a vote
3 against.

4 Cast your vote. Has every delegate voted?
5 Does any delegate desire to change his vote?

6 The Clerk will record the vote.

7 There being 97 votes in the affirmative and
8 none in the negative, the amendments proposed by the Com-
9 mittee on Style, Drafting and Arrangement are adopted.

10 The question now arises on the adoption of Com-
11 mittee Recommendation No. GP-1 as amended. Is there
12 any discussion?

13 Delegate Johnson.

14 DELEGATE JOHNSON: Mr. President, I am not
15 aware of any amendments to GP-1. Is the Chair aware of
16 any pending amendments to GP-1?

17 THE PRESIDENT: As the Chair announced, it has
18 no amendments.

19 Any discussion? Are you ready for the question?

20 The question arises on the approval on second
21 reading of Committee Recommendation No. GP-1 as amended.

1 A vote Aye is a vote in favor of Committee
2 R-commendation GP-1 as amended. A vote No is a vote
3 against.

4 Cast your votes.

5 Has every delegate voted? Does any delegate
6 desire to change his vote?

7 The Clerk will record the vote.

8 There being 98 votes in the affirmative and one
9 in the negative, the motion is carried.

10 Committee Recommendation GP-1 as amended is
11 adopted.

12 The next item on the calendar is the Report
13 of the Committee on Style, Drafting and Arrangement No.
14 S&D-3, with respect to Committee Recommendation SF-1.
15 The Chair recognizes Delegate Penniman, Chairman of the
16 Committee.

17 DELEGATE PENNIMAN: Again the only changes
18 that have been made are to take into account the discussion
19 on the floor. There was a question from Delegate Fornos
20 to Delegate Sherbow with respect to the manner of selec-
21 tion of the principal officer, and it was stated by

1 Delegate Sherbow that to be appointed meant to be elected,
2 so we put in the word "elected." We left there for the
3 man to be elected and to be also responsible to the General
4 Assembly.

5 THE CHAIRMAN: Are there any amendments as to
6 style? The Chair has received none.

7 If not, the question arises on the approval of
8 the recommendations of the Committee on Style, Drafting,
9 and Arrangement, and adoption of the amendments by the
10 committee.

11 Is there any discussion? Are you ready for the
12 question?

13 The question arises on the approval of the
14 amendments recommended by the committee. A vote Aye is a
15 vote in favor of the amendments. A vote No is a vote against.

16 Cast your votes.

17 Has every delegate voted? Does any delegate
18 desire to change his vote?

19 The Clerk will record the vote.

20 There being 100 votes in the affirmative and
21 none in the negative, the motion is carried and the

1 amendments proposed by the committee are adopted.

2 The question now arises on the approval of
3 Committee Recommendation SF-1 as amended. Are there
4 any further amendments? The Chair hears none.

5 There being no further amendments, the question
6 arises on the adoption of Committee Recommendation SF-1 as
7 amended.

8 Is there any discussion? Are you ready for the
9 question?

10 The question arises on the adoption of Committee
11 Recommendation No. SF-1 as amended. A vote Aye is a vote
12 in favor of the adoption of the recommendation. A vote No
13 is a vote against.

14 Cast your votes.

15 Has every delegate voted? Does any delegate
16 desire to change his vote?

17 The clerk will record the vote.

18 There being 101 votes in the affirmative and
19 none in the negative, the motion is carried and Committee
20 Recommendation No. SF-1 as amended is adopted.

21 The next item on the agenda is consideration

1 of the report of the Committee on Style, Drafting and
2 Arrangement No. S&D-4 with respect to Committee Recommen-
3 dation No. 2.

4 The Chair recognizes Chairman Penniman,
5 Chairman of the Committee.

6 DELEGATE PENNIMAN: In this case we added
7 words "the parenthetical language being optional," and we
8 added in the last line, number 26, "by this Constitution or",
9 to make sure that it was covered in this fashion.

10 THE PRESIDENT: Any further recommendations as
11 to style? The Chair has received none. Are there any?

12 The question arises on the approval of the amend-
13 ments recommended by the committee. Is there any dis-
14 cussion? Are you ready for the question?

15 The question arises on the approval of amend-
16 ments recommended by the Committee on Style, Drafting
17 and Arrangement. A vote Aye is a vote in favor of the
18 amendments. A vote No is a vote against.

19 Cast your votes.

20 Has every delegate voted? Does any delegate de-
21 sire to change his vote?

1 The Clerk will record the vote.

2 There being 101 votes in the affirmative and
3 none in the negative, the amendments recommended by the
4 Committee are adopted.

5 Committee Recommendation GP-2 as amended is
6 now open to further amendment. The Chair has received
7 several amendments.

8 Delegate Cardin, apparently your Amendments A
9 and C are identical except for the names of the sponsors.
10 Is C the one you desire to offer?

11 DELEGATE CARDIN: Yes, please, Mr. Chairman.

12 THE PRESIDENT: The pages will please distribute
13 Amendment C.

14 Delegate Bell.

15 DELEGATE BELL: This is the first time I have
16 been on the floor. You haven't heard me for three months,
17 but I do have the pleasure of introducing Mr. and Mrs.
18 Harry Barton. Mr. Barton is a member of the Home
19 Economics Commission recently appointed, some two years
20 ago, by the late Governor Tawes. (Laughter.)

21 Pardon me. I should say the former governor.

1 I beg your pardon.

2 THE PRESIDENT: He appears to be very much alive.

3 DELEGATE BELL: I am so glad that he is still
4 available and here. I apologize. I should just say the
5 former governor. I do know better than that.

6 Also, his wife, Mrs. Barton, who has been very
7 active in the Homemakers Association. Mr. and Mrs. Barton
8 are in the rear gallery.

9 THE PRESIDENT: We are delighted to have them.
10 (Applause.)

11 This will be Amendment No. 1.

12 For what purpose does Delegate Johnson rise?

13 DELEGATE JOHNSON: Mr. President, I am going to
14 suggest a departure from the ordinary procedure,
15 but inasmuch as the original sponsor of the original
16 amendment in the Committee of the Whole with
17 respect to the parenthesis "(in the presence of Almighty
18 God)" end parenthesis, is not in the room -- and I
19 don't know why he is absent; I am sure there is a very good
20 reason -- and because there is apparently another amend-
21 ment to this section, I am wondering if we could bypass

1 this particular amendment at this time and go to the next
2 amendment.

3 THE CHAIRMAN: Do you have any idea where
4 Delegate Rybczynski is?

5 DELEGATE JOHNSON: No, sir. I am sorry. I do
6 not.

7 THE PRESIDENT: Delegate Cardin.

8 DELEGATE CARDIN: Mr. President, the Committee
9 on Suffrage and Elections was entertained by
10 Chairman Koss, and Delegate Rybczynski, I am sure, will be
11 coming very shortly.

12 THE PRESIDENT: Under the circumstances, further
13 consideration of Recommendation GP-2 and Amendment No. 2
14 plus other amendments with respect thereto will be passed
15 over.

16 THE PRESIDENT: The Chair feels that Delegate
17 Rybczynski needs a little time to collect his thoughts.

18 We will proceed with the consideration
19 of the Report of the Committee on Style, Drafting and
20 Arrangement No. S&D-5.
21

1 This is with respect to Committee Recommendation
2 GP-4.

3 The Chair recognizes Delegate Penniman.

4 DELEGATE PENNIMAN: This is much less compli-
5 cated. The only changes that are being made here is to
6 shift the word "by law" in order not to divide a verb,
7 and to put in upper case the letter "S" in the word "State."

8 THE PRESIDENT: The Chair has received no
9 stylistic amendments. Are there any? The Chair hears none.

10 The question arises on the approval of amendments
11 proposed by the committee. Is there any discussion?

12 Delegate Macdonald.

13 DELEGATE MACDONALD: May I ask the Chairman
14 of the Committee on Style a question?

15 THE PRESIDENT: Yes. State the question.

16 DELEGATE MACDONALD: Does the phrase here, Mr.
17 Delegate Penniman, mean by public general law?

18 DELEGATE PENNIMAN: The phrase here has the same
19 meaning as public general law. That is correct.

20 THE PRESIDENT: Is there any further discussion?
21 Are you ready for the question?

1 The question arises on the approval of the
2 amendments proposed by the committee with respect to
3 Committee Recommendation GP-4.

4 A vote Aye is a vote in favor of the amendments.
5 A vote No is a vote against.

6 Cast your votes.

7 Has every delegate voted? Does any delegate
8 desire to change his vote?

9 The Clerk will record the vote.

10 There being 114 votes in the affirmative and
11 3 in the negative, the amendments proposed by the Committee
12 on Style, Drafting and Arrangement are adopted.

13 The question now arises on the approval of
14 Committee Recommendation GP-4 as amended. The Chair has
15 received one amendment.

16 Delegate Freedlander, do you desire to submit
17 your amendment?

18 DELEGATE FREEDLANDER: Yes, Mr. President.

19 THE PRESIDENT: The pages will please distribute
20 the amendment, Amendment A.

21 This will be Amendment No. 1. The Clerk will

1 read the amendment.

2 MR. QUILLEN: Amendment No. 1 to Committee
3 Recommendation No. GP-4, as amended by Report No. S&D-5,
4 by Delegate Freedlander:

5 On page 1 of the report strike out all of
6 Section _____, Consumer Protection, comprising lines
7 3 through 8, inclusive.

8 THE PRESIDENT: The amendment is proposed by
9 Delegate Freedlander.

10 Is there a second?

11 Delegate Freedlander, as the Chair understands
12 the amendment, it is to strike the entire recommendation.
13 I don't think that is in order. You can accomplish the
14 same purpose in one of two ways: either by motion for
15 indefinite postponement, or what would be simpler and
16 accomplish the same purpose would be a vote opposing
17 approval or adoption of the committee recommendation.

18 The amendment is not necessary to accomplish
19 your purpose, if the Chair understands your purpose.

20 DELEGATE FREEDLANDER: Thank you very much.

21 I will choose the second method you mentioned.

1 THE PRESIDENT: Very well.

2 Amendment No. 1 is scratched. It has not yet
3 been offered.

4 Delegate Hostetter.

5 DELEGATE HOSTETTER: Mr. President, a point of
6 parliamentary inquiry. Since the amendment is scratched,
7 that eliminates all discussion and debate. Is that cor-
8 rect?

9 THE PRESIDENT: It does not. The question
10 now arises on the adoption of the committee recommendation
11 as amended. That is debatable. The Chair would intend
12 to recognize Delegate Freedlander. It is subject to full
13 debate, in accordance with the policy heretofore announced.

14 DELEGATE HOSTETTER: Thank you, sir.

15 THE PRESIDENT: The question now arises on the
16 adoption of Committee Recommendation No. GP-4 as amended.

17 The Chair recognizes Delegate Freedlander.

18 DELEGATE FREEDLANDER: Mr. President and fellow
19 delegates:

20 It is not my intention to delay the discussions
21 of this evening nor to prolong the discussions; nor am I

1 against consumer protection.

2 I am very much in favor of consumer protection.
3 It is precisely for that reason that I rise, because I am
4 in favor of the General Assembly providing by law for the
5 protection and education of the citizens of the State
6 against harmful and unfair business practices.

7 Shortly after the conclusion of our debates on
8 this topic I received in the mail the Attorney General's
9 digest, which I have circulated among you as a memorandum,
10 and it seems to me that the Attorney General under a law
11 passed by the General Assembly last year is doing exactly
12 what the debate indicated we all wanted, that we wanted
13 the protection and education of the citizens of the State
14 against harmful and unfair practices.

15 You will note in the memorandum that was cir-
16 culated that the functions of the new division can be
17 grouped in four major categories: mediation, education,
18 legislation, and investigation.

19 The agency or division of the Attorney General's
20 Office has already received 1500 citizen complaints and
21 has been successful in obtaining refunds totalling some

1 \$40,000. It seems to me in the short time that this di-
2 vision of the Attorney General's Office has been in exist-
3 ence it has accomplished quite a bit of what we all want;
4 therefore, I feel to use words that have been used so
5 frequently here and so often, this is surplus language.
6 It is true that it may appear to the public that we are
7 favoring consumer protection in that we are putting this
8 in to sweeten the Constitution. I don't think a Constitu-
9 tion needs to be sweetened. I don't think a Constitution
10 needs to be sweetened. I think it should be a broad and
11 flexible document written so that it accomplishes what we
12 all want.

13 We have consumer protection on a Federal level
14 without any provisions within the Federal Constitution;
15 therefore, I would urge you to vote against including this
16 provision in the Constitution of 1967.

17 THE PRESIDENT: Does any other delegate desire
18 to speak in favor of the committee recommendation?

19 Delegate Bard.

20 DELEGATE BARD: Mr. President, I should like
21 to speak in favor of the committee recommendation.

1 I will not make a long presentation, because
2 I thought that we had debated this issue. We have talked
3 about the pros and cons; we have dealt with it fairly;
4 we have had a vote on the basis of a good deal of delibera-
5 tions, and if we are going to open up each issue that had
6 been discussed on the floor in the fair way that we have
7 set forth in the Committee of the Whole, we are absolutely
8 lost.

9 There is no point in elaborating on all of the is-
10 sues as we discussed them. It was made perfectly clear that
11 this went beyond the whole point of legislation.

12 The mere fact that we are proceeding in this area,
13 not only in recapitulating, because this isn't the time to
14 do it, more in the case, the need in this area.

15 I hope this will not be a reversal so we will
16 have to go back to recapitulate and redebate the issues
17 as they come before the Convention as a whole. We haven't
18 done this, and if we started on this, there is something
19 like ten other areas, and then we will certainly be here
20 beyond March.

21 THE PRESIDENT: Does any other delegate desire

1 to speak against the recommendation?

2 Delegate Gallagher.

3 DELEGATE GALLAGHER: Mr. Chairman, I have
4 the pleasure of moving the previous question.

5 THE PRESIDENT: Is there a second?

6 (Whereupon, the motion was seconded.)

7 THE PRESIDENT: All in favor, signify by saying
8 Aye; contrary, No.

9 The Ayes have it, and it is so ordered.

10 The question arises on the --

11 DELEGATE KOGER: I wanted to ask a question, but
12 I understand from the gallery -- I understand I cannot
13 ask you a question.

14 THE PRESIDENT: Is it a parliamentary inquiry?

15 DELEGATE KOGER: Is the passage of this or
16 acceptance --

17 THE PRESIDENT: Delegate Koger, hold your micro-
18 phone close to your mouth, because I am having trouble
19 hearing you.

20 DELEGATE KOGER: All right.

21 What I wanted to find out, if we pass the

1 Motion of Delegate Gallagher, does that mean that we cannot
2 speak for this bill?

3 THE PRESIDENT: Yes.

4 Delegate Gallagher's motion has already been
5 adopted. That cuts off debate.

6 The question arises on approval of the
7 committee recommendation.

8 DELEGATE KOGER: Do we get another opportunity?

9 THE PRESIDENT: On third reader, if it survives
10 that long.

11 DLEEGATE KOGER: All right.

12 THE PRESIDENT: The question arises on the adop-
13 tion of Committee Recommendation GP-4. A vote Aye is a
14 vote in favor of the recommendation. A vote No is a vote
15 against.

16 Cast your votes.

17 Has every delegate voted? Does any delegate
18 desire to change his vote?

19 The Clerk will record the vote.

20 There being 61 votes in the affirmative and
21 57 in the negative, the motion is carried and

1 Committee Recommendation GP-4 as amended is adopted.

2 We will now revert -- for what purpose does
3 Delegate Weidemeyer rise?

4 DELEGATE WEIDEMEYER: Mr. President, I thought
5 we were voting on the report for the recommendation. I now
6 understand we are voting on the motion to strike the
7 recommendation. I would like to have my vote changed.

8 THE PRESIDENT: You were not voting on any
9 amendment to strike. You were voting on a recommendation.
10 A vote Aye was a vote in favor of the Committee Recommen-
11 dation. A vote No was a vote against.

12 THE PRESIDENT: I voted No. I wish to have it
13 that way.

14 THE PRESIDENT: Very well.

15 For what purpose does Delegate White rise?

16 DELEGATE WHITE: I just wanted to make certain
17 whether or not we had put this question to rest.

18 THE PRESIDENT: Under the Convention's rules,
19 as the Chairman pointed out yesterday, motions to reconsider
20 any matters adopted by the Convention are in order at any
21 time prior to adjournment sine die.

1 DELEGATE WHITE: Thank you.

2 THE PRESIDENT: We now revert to consideration
3 of Committee Recommendation GP-2 as amended.

4 For what purpose does Delegate Willis rise?

5 DELEGATE WILLIS: A point of personal privilege,
6 Mr. President.

7 THE PRESIDENT: State the privilege.

8 DELEGATE WILLIS: I would like to present
9 to the Convention three members of the Staff of the Board
10 of Education of Harford County who are in the balcony in
11 front of the chamber: Mr. A. A. Roberty, Mr. Al Halsey,
12 and Mr. Leslie Goodwin. These three gentlemen have gone a
13 long way to make it possible for me to be here. I would
14 like to give them a real welcome. (Applause.)

15 THE PRESIDENT: We have before us Committee Recom-
16 mendation GP-2, Amendment No. 1, proposed by Delegate Cardin
17 and seconded by the numerous other sponsors whose names
18 appear on the amendment.

19 The Chair recognizes Delegate Cardin to speak
20 to the amendment.

21 DELEGATE CARDIN: Mr. President, first I should

1 like to correct an error. The name of Delegate Gleason was
2 by error included in this.

3 THE PRESIDENT: Pardon me.

4 The Clerk calls my attention to the fact that the
5 amendment was not read before we passed it over.

6 The Clerk will read the amendment.

7 MR. QUILLEN: Amendment No. 1 to Committee
8 Recommendation GP-2, as amended by Report No. S&D-4, by
9 Delegates Cardin, Bamberger, Bard, Bennett, Boileau, Borom,
10 Bothe, Boyce, Bryson, Byrnes, Caldwell, Carson, Case,
11 Chabot, Darby, Fox, Freedlander, Gallagher, Gilchrist,
12 Gleason, Grant, Grumbacher, Gullett, Hanson, Hardwicke,
13 Hargrove, Henderson, Hutchinson, Jett, Key, Koger, Koss,
14 Leitzel, Linton, Lord, Macdonald, Marion, Mason, Maurer,
15 B. Miller, Mitchell, Morgan, Moser, D. S. Murray, Needle,
16 Powers, Raley, K. L. Robie, Rollins, Scanlan, Schloeder,
17 Singer, J.H. Smith, Sollins, Storm, H. Taylor, L. Taylor,
18 Ulrich, White, Willis, Willoner, and Winslow:

19 On page 1, Section _____, Oath, strike out
20 all of lines 10 and 11 and insert in lieu thereof the
21 following: "I, _____,"

1 THE PRESIDENT: Delegate Cardin.

2 DELEGATE CARDIN: There were two names included
3 which are to be removed as sponsors.

4 THE PRESIDENT: Would you indicate them, please?

5 DELEGATE CARDIN: The two names are Delegate
6 Gleason and Delegate Scanlan.

7 THE PRESIDENT: Strike Delegate Gleason's name
8 in line 21, and Delegate Scanlan's name in line 27.

9 Very well.

10 DELEGATE CARDIN: Mr. President and fellow
11 delegates:

12 At the time this amendment was proposed, and
13 if I may refer to it as "the parenthetical God phrase"
14 was proposed, there was some question about whether there
15 would be a reference to a diety in the Constitution.
16 Since that time our preamble has included "Almighty God
17 and His beneficence." However, we include Him without
18 the dubious crutches of the parenthesis.

19 I feel, first, it is not necessary in the oath.
20 Second, that it may be unconstitutional -- and I would
21 personally prefer my diety out of the parenthesis, standing

1 alone.

2 I would like, if possible, under our procedure,
3 to yield the floor to two delegates who have the right
4 to speak to this.

5 THE PRESIDENT: You don't have the right to
6 yield the floor; but they will be recognized when they
7 ask for it.

8 DELEGATE CARDIN: I would like to say one thing
9 which does not refer to the amendment.

10 Even though I am against censorship I would
11 like the editors to know they have my permission to use
12 editorial license on the tape and transcript if they feel
13 it is required.

14 THE PRESIDENT: Does any Delegate desire to
15 speak in opposition to the amendment?

16 DELEGATE BLAIR: Mr. Chairman, I am not neces-
17 sarily speaking in opposition. My position is one in
18 which I was the chairman of the subcommittee on oaths,
19 and today I thought it was expedient to prepare something
20 in connection with the position of the research committee
21 on the constitutionality of the oath.

1 I did this to try to step this debate along tonight
2 and so that the committee would have the opportunity of read-
3 ing the memorandum, the research article in connection
4 with the views on the constitutionality of it. I therefore,
5 with the approval of Mr. Boyer and also Delegate Rybczynski,
6 who was also the one who offered the amendment originally,
7 putting God into the oath, I thought if we could possibly
8 bring it to a head it would be helpful.

9 I would like it to be known this is not a posi-
10 tion paper in any way and that our names appearing on here,
11 Rybczynski, Blair, and Boyer, does not represent any posi-
12 tion that we have taken; but I do think that it is interest-
13 ing to bring to the attention of the committee that the
14 research article does not formulate any judicial opinion
15 but still leaves the matter up in the air.

16 I thought we could possibly resolve that if it
17 can be done by research. Apparently it can't be done,
18 but the conclusions that you would draw from reading the
19 thing would be purely wrong without any judicial inter-
20 pretations establishing a principle or precept.

21 THE PRESIDENT: Does any delegate desire to speak

1 in favor of the amendment.

2 Delegate Fornos.

3 DELEGATE FORNOS: Mr. President, I move the
4 previous question.

5 THE PRESIDENT: The motion is not debatable.
6 Is there a second?

7 (Whereupon the motion was seconded.)

8 THE PRESIDENT: Delegate Bamberger.

9 DELEGATE BAMBERGER: Point of parliamentary
10 inquiry.

11 What vote is required to approve the motion
12 to move the previous question?

13 THE PRESIDENT: The majority of those present
14 and voting.

15 Delegate Grant.

16 DELEGATE GRANT: Although the previous ques-
17 tion has been moved, didn't the Chair make the statement
18 that he intended to have two delegates speak? Wouldn't
19 that take precedence over the previous question?

20 THE PRESIDENT: It would not.

21 The Chair has no control over the matter.

1 Under the rules, the motion for moving the
2 question takes precedence, and it is not debatable.

3 For what purpose does Delegate White rise?

4 DELEGATE WHITE: In the interest of fair play
5 I would ask the Convention to permit the maker of the
6 original motion, Delegate Rybczynski, to put --

7 THE PRESIDENT: Your motion is out of order.

8 The Chair has to put the question.

9 The question arises on the motion for the
10 previous question. A vote Aye is a vote in favor. A
11 vote No is a vote against.

12 All in favor, say Aye; contrary, No. The Nos
13 appear to have it, and it is so ordered.

14 Does any delegate desire to speak in favor of
15 the amendment?

16 Delegate Macdonald.

17 DELEGATE MACDONALD: Mr. Chairman and fellow
18 Delegates:

19 I for one would hate to see us adopt a Constitu-
20 tion which shows promise of being one of the finest Consti-
21 tutions in the United States, and yet have it contain an

1 unconstitutional oath or one which may be shrouded in doubt
2 as to its constitutionality.

3 Now, in the case of Torcaso versus Watkins,
4 decided by the United States Supreme Court, the Supreme
5 Court held that it was unconstitutional to make a reference
6 -- to require a reference to Almighty God in the taking
7 of an oath, and that case originated here in Maryland.
8 That oath was prescribed by the Constitution.

9 Now, the oath that we have in this committee
10 recommendation is optional, so the question is, does the fact
11 that it is optional save it? Would that make it constitu-
12 tional?

13 In Engle versus Vitale, a case which was de-
14 cided by the United States Supreme Court in June of 1962,
15 the question of a prayer which had been prescribed by the
16 New York Board of Regents was involved. The prayer read
17 as follows:

18 "Almighty God, we acknowledge our dependence
19 on Thee and we beg Thy blessings upon us, our parents,
20 our teachers, and our country."

21 The decision, the facts in the case made it

1 clear that this prayer was optional. It was not required.
2 It was not compulsory.

3 As Justice Douglas stated -- and I quote --
4 "As I read this regulation, a child is free to stand or
5 not stand, to recite or not recite, without fear of reprisal
6 or even comment by his teacher or any other school official."

7 The United States Supreme Court held that never-
8 theless, it was unconstitutional to require, to establish
9 the prayer.

10 Let me read a little bit from the court's de-
11 cision. The court stated -- and I quote -- "Neither the
12 fact that the prayer may be denominationally neutral nor
13 the fact that its observance on the part of the students
14 is voluntary can serve to free it from the limitations
15 of the establishment clause. The establishment clause --"
16 and I am still quoting -- "unlike the free exercise clause,
17 does not depend upon any showing of direct governmental
18 compulsion and is violated by the enactment of laws which
19 establish an official religion, whether those laws
20 operate directly to coerce non-observer individuals or not."

21 In other words, the basis of the decision was

1 not compulsion nor the lack of compulsion. The basis of
2 the decision was that there was an official establishment
3 of a prayer, and by that very fact the court struck it
4 down.

5 In the *Torcaso* case by the United States
6 Supreme Court the court stated that neither the State nor
7 the Federal Government can require a person to profess a
8 belief or disbelief in any religion. So the fact
9 that the prayer is optional does not save it. I think it
10 should be removed.

11 THE PRESIDENT: Does any other delegate desire
12 to speak against the recommendation -- I am sorry; against
13 the amendment?

14 Delegate Adkins.

15 DELEGATE ADKINS: Mr. Chairman, I think that
16 this Convention is being swept off its feet. The proposal
17 here is to eliminate the words which are completely optional
18 with the person who is proposing to take them. I personally
19 would be very happy to see the entire oath eliminated.
20 The oath does nothing, in my judgment, to insure the
21 proper performance of any duties of a public official.

1 If this Convention elects to require an oath,
2 it seems to me the least it can do is to permit the person
3 taking the oath to decide the terms in this context in
4 which it would take that oath.

5 Let me preface it by saying I do not profess to
6 be a constitutional lawyer. I do not even profess to be
7 familiar with the cases which are related to this problem.
8 I do suggest that the court cannot and will not say that
9 a man giving the right to either affirm or state the
10 words in the presence of Almighty God will decree that
11 that is an unconstitutional exercise of an individual right.

12 There is no constitutional denial of a man's
13 right to believe in God. There is a Constitutional denial
14 of a requirement that he shall believe in God; and I
15 suggest that we are confusing the issues in this section.

16 I am not a religious man. Should I take the
17 oath, I should probably prefer to say that I affirm, be-
18 cause that is all in due honesty I could say.

19 There are many people in this State who do not
20 so feel. We are doing great violence to many deeply held
21 beliefs of the people of Maryland in this Constitution.

1 I beg you not to offend their sensibilities beyond what you
2 must do. I suggest to you that in this instance you are
3 offending their beliefs beyond that which you must not and
4 need not do.

5 Write a Constitution for Maryland. Do not in-
6 sult the people based on some decisions of the Supreme
7 Court which do not require you to do them.

8 If you wish to go to the people and have this
9 Constitution adopted, give them at least some basis for
10 believing that we have acted responsibly. No person's
11 beliefs can be offended by having a complete and free op-
12 tion in this situation. Nobody acts under compulsion.
13 There is no legal sanction. There is no personal sanction.
14 There is no requirement of any kind in this situation.

15 I urge this Convention to at least leave this
16 modicum for option for those people who still believe
17 that there is a superior being.

18 THE PRESIDENT: Does any other delegate desire
19 to speak in favor of the amendment?

20 Delegate Key.

21 DELEGATE KEY: Mr. President and other delegates.

1 I simply would like to say that I am insulted
2 -- and I am a religious person -- that God has to be put
3 in parenthesis. This is my objection. If there is to be
4 an option, it should be the other way around.

5 THE PRESIDENT: Any further discussion?
6 Are you ready for the question?

7 Delegate Rybczynski.

8 DELEGATE RYBCZYNSKI: Mr. President, by what
9 happened out of my presence you afforded me a perfect
10 opportunity at humor; however, I have no desire at humor,
11 not so much because of the subject, but because of what
12 happened here earlier.

13 I want to publicly say that as the son of an
14 immigrant it gives me to know that an immigrant would try
15 to cut off debate knowing that the sponsor has not had an
16 opportunity to speak.

17 Now, as to the case that Delegate Macdonald
18 spoke of, please distinguish readily between that case
19 and the facts here.

20 In that case each day a child was required
21 to stand and either participate or stand out as a sore

1 thumb. We are not talking about the same thing.

2 Now, in order to make certain that I would not
3 take too much time, I prepared a statement which I would like
4 to read at this time.

5 For a length of time now, stretching into cen-
6 turies, our forefathers of this State of Maryland very
7 grandly and mightily proclaimed a freedom to be religious
8 and God-fearing, which freedom has served the people of this
9 State well.

10 Some now want to corrupt this hallowed concept,
11 to mean a State free of God any any mention of God and
12 any reference to God. This Constitution is being
13 molded through the efforts of all 142 delegates to
14 this Convention by collective reasoning, argument
15 and voting, and by the adoption of the preamble as
16 proposed by a committee. This collective bargaining, rea-
17 soning and voting has proved overwhelmingly that this body
18 does not, in fact, want to continue the tradition and show
19 of respect.

20 On November 6 of this year, without great
21 amounts of grant oratory or heated argument, and without

1 the witticism attached to cutting and biting ridicule of
2 honest effort, we spontaneously reflected our collective
3 consciences by favorably adopting this provision which
4 grants an option to an officer of this State to commence
5 his oath and his term of office with a traditional oath, "In
6 the presence of Almighty God."

7 We are a Convention of representatives meeting
8 for the purpose of writing a living Constitution for the
9 people we represent. We are not a committee of lawbook
10 publishing companies preparing an appendix for a text on
11 State government.

12 To those of you who have pause about a contrary
13 reaction from the courts, there is on your desk a precise
14 statement indicating no such fear on the part of our
15 research staff.

16 I strongly urge you to disregard the last para-
17 graph of that memorandum, which obviously is a personal
18 reference and not based on any law.

19 To those of you who voted against this provision
20 because of the use of parenthesis to exercise the option
21 and not the requirement, let me say first that the form of

1 the amendment was forced on me by the knowledge that the
2 statement must be optional to comply with the current
3 thinking of the Supreme Court.

4 Let me suggest that at the time of the use of
5 this clause, there will be no reference to such parenthesis,
6 but rather will read as one continuous sentence.

7 If this is in fact your only complaint in grammar
8 and sentence structure, present us with the amendment
9 necessary to correct this complaint. Do not hide behind a
10 pair of parenthesis.

11 I strongly urge you to vote against the amend-
12 ment and to vote with the report.

13 THE PRESIDENT: Delegate Sickles, do you still
14 intend to offer your amendment?

15 DELEGATE SICKLES: I had no intention of offer-
16 ing the amendment unless the current amendment were to
17 fail.

18 THE PRESIDENT: All right.

19 The Chair recognizes Delegate Scanlan to speak
20 in favor.

21 DELEGATE SCANLAN: Mr. Chairman, I thought now

1 without further consideration I could move the previous
2 question. I think both sides of the issue have been briefly
3 heard.

4 THE PRESIDENT: Is there a second?

5 For what purpose does Delegate Cardin rise?

6 DELEGATE CARDIN: Before you recognized Dele-
7 gate Scanlan, I wanted to answer Delegate Rybczynski.

8 THE PRESIDENT: Would you withdraw your motion
9 to permit Delegate Cardin to reply to Delegate Rybczynski?

10 DELEGATE SCANLAN: I withdraw my motion, but I
11 understand no Delegate can speak more than once on a
12 pending matter.

13 THE PRESIDENT: You are right. She is a mover,
14 and a mover, under the rule, can speak twice.

15 Do you withdraw your motion?

16 DELEGATE SCANLAN: I do.

17 THE PRESIDENT: Thank you.

18 Delegate Cardin.

19 DELEGATE CARDIN: Thank you very much, Delegate
20 Scanlan.

21 There are two brief statements I would like
to make. Before we vote, I would like all of you to look

1 closely at the memorandum that was distributed today,
2 and I believe it was distributed today. In all fairness,
3 I was quite surprised to see the last paragraph, and the
4 explanation of the last paragraph just now was that we
5 should remove any impression this paragraph would give you
6 before you vote.

7 I suggest that was not the intention of the
8 researcher who prepared this paper. His statements in that
9 paragraph are evidently based on the research that he made.

10 The second thing that I would like to say,
11 although I would never take issue with Judge Adkins, there
12 is a prejudice in a choice. By the very fact that the
13 office taker must make the choice whether or not he wishes
14 that parenthetical phrase, he has prejudiced himself.

15 If we should have one who refuses to say that,
16 all will know that he has refused. This is something
17 that we will not have if we remove the parenthetical phrase.
18 There will be no possibility of knowing whether or not
19 the person made the choice.

20 I am a religious person, and I feel very strongly
21 for this reason. I urge you to vote for the amendment.

1 THE PRESIDENT: For what purpose does Delegate
2 Sherbow rise?

3 DELEGATE SHERBOW: I would like to be heard in
4 opposition to the amendment.

5 May I proceed?

6 THE PRESIDENT: You may proceed.

7 DELEGATE SHERBOW: I shall be very brief.

8 Do not fear that anyone who has this choice to
9 make will stand out and be afraid. I have been in court as
10 a lawyer and as a judge and have watched people refuse to
11 take the oath and so solemnly affirm. Nobody was prejudiced.
12 Nobody was concerned. This is a right, and they acted
13 accordingly.

14 Next, I address myself to Delegate Macdonald's
15 discussion of the law. Our Court of Appeals has held that
16 they will not discuss or act on a matter unless there is a
17 justiciable issue, and the same thing applies to the
18 United States Supreme Court. One who is elected or
19 appointed has to take an oath. If he takes the oath
20 without the parenthetical phrase that is here, there is no
21 problem. If he refused to take the oath, what is his

1 answer?

2 He is not required to say that which he is un-
3 willing to say. His position is completely untenable,
4 and therefore he would proceed to take the oath without
5 this provision in it, and there will be no case for any-
6 body to decide.

7 It seems to me that all we are doing in this
8 Constitution is simply saying: Here is the oath. You
9 may, if you wish, you may not, if you do not wish, add to
10 it this expression.

11 On the solemn occasion when one takes his office,
12 this is not a matter which is to be lightly glossed over
13 on the theory that the Almighty is in parenthesis.

14 I think you may act according to your conscience.
15 If your conscience says you do not wish to say this, you
16 do not have to say it. But if you do wish to say it, you
17 may. And all that we say is, and I say -- and I know
18 deep in my heart I am right -- no constitutional provision
19 will ever be set aside as being unconstitutional because
20 you have this choice.

21 I am against the amendment.

1 THE PRESIDENT: Are you ready for the question?

2 For what purpose does Delegate Robey rise?

3 DELEGATE ROBEY: For a point of personal

4 privilege, Mr. Chairman.

5 THE PRESIDENT: State the privilege.

6 DELEGATE ROBEY: Evidently by some oversight

7 this entire row has not seen the important memorandum

8 that we are talking about, and yet several references have

9 been made to it in the course of this debate.

10 I would appeal for a few moments so we can see

11 it. We have had some copies passed to us, but we have

12 not had a chance to see it.

13 THE PRESIDENT: I assume the memo you are

14 referring to is the one which was distributed some time

15 ago?

16 DELEGATE BLAIR: It was distributed before noon.

17 DELEGATE ROBEY: We checked our desk, and I

18 polled some of the members of this row, and we did not

19 receive it.

20 DELEGATE GLEASON: Mr. Chairman.

21 THE PRESIDENT: Just a second, please.

1 Chief page.

2 For what purpose does Delegate Gleason rise?

3 DELEGATE GLEASON: Mr. Chairman, I don't need
4 the memorandum. I would like to move the previous ques-
5 tion.

6 THE PRESIDENT: The Chair will recognize Delegate
7 Scanlan, since he yielded the question only to permit
8 Delegate Cardin to speak.

9 Wait just a minute and see if the pages can get
10 additional copies of the memorandum.

11 For what purpose does Delegate Hutchinson rise?

12 DELEGATE HUTCHINSON: A point of personal
13 privilege, Mr. Chairman.

14 THE PRESIDENT: State the privilege.

15 DELEGATE HUTCHINSON: This afternoon when we
16 voted on the final approval of R&P-1, I walked out in the
17 lobby to tell a couple of relatives good-bye. When you
18 voted on that, the quorum bell was not rung. I did not
19 have an opportunity to vote on R&P-1. I wonder if it
20 would be possible to do so at this time, since we were
21 in the midst of --

1 THE PRESIDENT: If you merely wish to
2 indicate for the record the way in which you would have
3 voted, had you been present, the Chair will permit it.
4 The Chair will not permit you to vote after the vote has
5 been recorded, because it could perhaps affect the
6 result, and that cannot be permitted. You may state how
7 you would have voted had you been here to vote.

8 DELEGATE HUTCHINSON: I would have voted Aye,
9 I believe.

10 THE PRESIDENT: Delegate Robey, have you had
11 the memorandum now?

12 DELEGATE ROBEY: We have the memorandum now.
13 Thank you, Mr. President.

14 THE PRESIDENT: Are you ready for the question?
15 The clerk will ring the quorum bell.

16 The question arises on the adoption of Amendment
17 No. 1. A vote Aye is a vote in favor of the amendment.
18 A vote No is a vote against.

19 Cast your vote.

20 Have all delegates voted? Does any delegate
21 desire to change his vote?

1 The Clerk will record the vote.

2 There being 61 votes in the affirmative and 62
3 in the negative, the motion is lost, and the amendment
4 is rejected.

5 Delegate Sickles, does the Chair understand you
6 now desire to offer your Amendment B?

7 DELEGATE SICKLES: I do, Mr. President.

8 THE PRESIDENT: The pages will distribute Amend-
9 ment B.

10 For what purpose does Delegate Vecera rise?

11 DELEGATE VECERA: Mr. President, I don't know
12 whether I voted for or against the amendment. I wanted
13 to be recorded against the amendment.

14 THE PRESIDENT: You don't know how you voted?
15 (Laughter.)

16 DELEGATE VECERA: I wanted to vote against the
17 amendment. I think I voted for it.

18 THE PRESIDENT: Delegate Vecera, the tally
19 sheet indicates that you voted in favor of the amendment.
20 If you cast that vote under a misapprehension as to what you
21 were voting on, you are not permitted to change the vote

1 except by unanimous consent. If in fact the vote was in
2 error by reason of the machine operating improperly or
3 your switch operating improperly or your finger hitting
4 it the wrong way, you may have your vote recorded properly.

5 What the Chair is trying to say to you is, if
6 you cast your vote differently from what you intended,
7 not because of a misunderstanding, but just because you
8 hit the lever the wrong way and you tell the Chair that
9 is what you did, the vote will be changed.

10 Otherwise, it can only be changed with unanimous consent.

11 DELEGATE VECERA: Yes, Mr. Chairman.

12 THE PRESIDENT: What is that?

13 DELEGATE VECERA: I hit the switch the wrong
14 way. (Laughter.)

15 THE PRESIDENT: Delegate Vecera's vote will be
16 changed from Yea to Nay.

17 The tally on the previous vote will thereby be
18 corrected. There being 60 votes in the affirmative and 63
19 in the negative, the motion is rejected.

20 For what purpose does Delegate Borom rise?

21 DELEGATE BOROM: A question of Delegate Vecera.

1 THE PRESIDENT: He doesn't have the floor.

2 DELEGATE BOROM: I would just like to know if he
3 would swear by this. (Laughter.)

4 THE PRESIDENT: Amendment B will be Amendment
5 No. 2.

6 The amendment is submitted by Delegate Sickles.
7 Is there a second? Is there a second?

8 (Whereupon, the amendment was seconded.)

9 THE PRESIDENT: The amendment is seconded by
10 Delegate Bennett.

11 The Chair recognizes Delegate Sickles to speak
12 to the amendment.

13 First, the Clerk will read the amendment.

14 MR. QUILLEN: Amendment No. 2 to Committee
15 Recommendation No. GP-2, as amended by Report No. S&D-4,
16 by Delegate Sickles:

17 On page 1, Section _____, Oath, strike out all
18 of line 11 and insert in lieu thereof the following:

19 " "I, _____, ";

20 And in line 20 after the word "State" add the
21 words: "(So help me God)".

1 THE PRESIDENT: The Chair recognizes Delegate
2 Sickles.

3 DELEGATE SICKLES: Mr. President and fellow
4 Delegates:

5 If you look at the amendment you see what it
6 does. It removes the clause that we have been discussing
7 at some length, "In the presence of Almighty God," and sub-
8 stitutes in lieu thereof at the end of the proposed oath,
9 also in parenthesis, "So help me God."

10 I think at first blush you might be inclined
11 to conclude that there is no difference. Let me explain
12 just why I have proposed this amendment. You have been
13 listening to references to the Supreme Court cases, and
14 one of the cases that was referred to was the Torcaso case.
15 I can remember the day when Roy Torcaso walked into my
16 office, because that was a case that I handled. I wish
17 I could stand here and say to you what the law is on this
18 subject. I wish I could be definitive and say what the
19 implications are.

20 I have listened to the arguments, and I think
21 that most people have given their best advice on it. But

1 Nobody is quite sure, quite sure, what the implications
2 would be.

3 I worried about this because I don't think that
4 even those of us who want to pay respect or allow those
5 who want to pay respect to the Lord, when they want to take
6 the oath, want to do anything that will impede the oath
7 or hurt the Constitution.

8 So I took the liberty after having recalled
9 some conversations after we first handled the Torcaso
10 case, and talked to some people who have been making a
11 study of this issue, and the point we finally came to
12 was that the expression, "In the presence of Almighty God,"
13 where it is put, would have the tendency to flow into that
14 first sentence and might be more considered by the Court
15 to be part of the oath than the traditional phrase added
16 at the end, "So help me God."

17 Then it was cited to me that there have been
18 some cases, I don't believe any of them are too recent,
19 but there have been some cases that have concerned themselves
20 with the exclams at the end of the oath, "So help me God,"
21 which have held that they do not go to the body of the

1 oath and that if left off or ignored do not affect the
2 oath which was taken, so that while at first blush it might
3 look like there is not a difference, there is in truth a
4 difference, and it is for this reason that I recommend
5 this amendment. And I hope there is not a pride of author-
6 ship or anything else that would be involved, because I
7 thought if it made any sense I would have said "So help
8 me Almighty God." I don't think it fits.

9 I think I am trying to give the opportunity to
10 the same people to make the same statement under the same
11 circumstances, but in a way that might be less susceptible
12 to any problems in the future.

1 THE PRESIDENT: Does any other delegate desire
2 to speak in opposition to the amendment?

3 Does any other delegate desire to speak?

4 Are you ready for the question?

5 The question arises on the adoption of Amendment
6 No. 2. A vote Aye -- Delegate Storm.

7 DELEGATE STORM: Is it too late for me just to
8 say one sentence?

9 THE PRESIDENT: Proceed.

10 DELEGATE STORM: I really think that this is a
11 significant amendment because to start it "In the presence
12 of Almighty God," it emphasizes a God forever, a God that
13 is punishing; while to put it at the end -- and I am
14 sincere in this -- I think it means, please help me to
15 do this, God; and there you really are expressing your faith,
16 rather than your fear. I think it is important.

17 THE PRESIDENT: Are you ready for the question?

18 The question arises on the adoption of Amendment
19 No. 2. A vote Aye is a vote in favor of the amendment;
20 a vote no is a vote against.

21 Cast your votes.

1 Has every delegate voted? Does any delegate
2 desire to change his vote?

3 The Clerk will record the vote.

4 There being 52 votes in the affirmative and 67 in
5 the negative, the motion is lost. The amendment is rejected.

6 The Chair has no further amendments to Committee
7 Recommendation GP-2. Are there any? The Chair hears none.

8 The question arises on the adoption of Committee
9 Recommendation GP-2, as amended.

10 Are you ready for the question?

11 The question arises on the adoption of Committee
12 Recommendation No. GP-2, as amended. A vote Aye is a vote
13 in favor of the recommendation; a vote No, against.

14 Cast your votes.

15 Has every delegate voted? Does any delegate de-
16 sire to change his vote?

17 The Clerk will record the vote.

18 There being 89 votes in the affirmative and 33
19 in the negative, the motion is carried.

20 Committee recommendation No. GP-2, as amended,
21 is adopted.

1 The Chair recognizes Delegate Powers, Chairman
2 of the Committee on Calendar and Agenda.

3 DELEGATE POWERS: Mr. President, I move the
4 Convention resolve itself into the Committee of the Whole
5 for the purpose of considering general orders of the day.

6 THE PRESIDENT: For what purpose does Delegate
7 Johnson rise?

8 DELEGATE JOHNSON: Mr. President, for the purpose
9 of moving for reconsideration of the action of the Con-
10 vention on S&E-5, Committee of the Whole Report No. 9,
11 and GP-4. I understand that is in order, but cannot be taken
12 up until the lapse of one day. Is that correct?

13 THE PRESIDENT: That is correct.
14 It is the second session day after the motion.

15 DELEGATE JOHNSON: I so move, Mr. President.

16 THE PRESIDENT: Is there a second to the motion?

17 (Whereupon the motion was seconded.)

18 THE PRESIDENT: It is moved by Delegate Johnson,
19 seconded by Delegate Boileau, that the Convention reconsider
20 the vote by which Committee Recommendation GP-4, as amended,
21 was adopted.

 Pursuant to the rule, the motion will be put on

1 the calendar for action at such time as the Committee on
2 Calendar and Agenda provides, not earlier than the second
3 session day after proceeding.

4 It has been regularly moved and seconded that
5 the Convention resolve itself into the Committee of the
6 Whole. All in favor, signify by saying Aye; contrary,
7 No. The Ayes have it. It is so ordered.

8 (Whereupon, at 9:45 p.m., the Convention
9 resolved itself into the Committee of the Whole.

10 (The mace was removed by the Sergeant at Arms.)

11 THE CHAIRMAN: The Committee of the Whole will
12 please come to order.

13 At the time the Committee of the Whole recessed
14 it had under consideration Amendment No. 3 to section 3 of
15 Committee Recommendation R&P-2.

16 I believe Delegate Weidemeyer had the floor at the
17 time.

18 DELEGATE WEIDEMEYER: Mr. President, I think I had
19 concluded my remarks in opposition to Amendment 3, and I wanted
20 to ask Delegate Henderson some questions, but I think I
21 concluded those.

1 THE CHAIRMAN: I don't desire to encourage further
2 discussion.

3 DELEGATE WEIDEMEYER: The only suggestion I have
4 is that Delegate Scanlan withdraw this amendment, and if he
5 has any objection to the separation of powers doctrine as
6 enunciated by GP-11, that he bring in his amendment at that
7 time, and probably he will not have any objection.

8 THE CHAIRMAN: Delegate Scanlan.

9 DELEGATE SCANLAN: I don't want to withdraw the
10 amendment, Mr. Chairman.

11 THE CHAIRMAN: Very well. Let's proceed.

12 Is there any further discussion?

13 Delegate Gleason.

14 DELEGATE GLEASON: Mr. Chairman and fellow dele-
15 gates:

16 I would be very concerned if the delegates of the
17 Committee of the Whole did not realize the importance of
18 this attempt to remove a section from this Constitution
19 which has been in every Constitution in the State of Maryland
20 and has been there in modified form in the last section be-
21 fore the Committee of the Whole, though it states that the

1 government shall be forever distinct and separated. It
2 has been in the Maryland Constitution since 1851.

3 Frankly, I find it a little difficult to under-
4 stand the concern of Judge Henderson who states what great
5 harm the permanence of this recommendation by the Committee
6 will have if it stays in the Constitution, in view of the
7 fact that this has long history, in view of the fact we
8 have had separate branches of government. We have had
9 administrative agencies. and particularly I find it
10 difficult to understand his concern when this provision
11 of the Constitution, not only in the Constitution of 1867
12 but going back to the original Constitution of Maryland,
13 has been continuously construed by the highest courts of
14 Maryland -- and it has been construed in cases involving
15 executive usurpation of legislative power; it has been con-
16 strued in cases involving judicial usurpation of legisla-
17 tive and executive power; and it has been construed in cases
18 of legislative usurpation of judicial and executive power.

19 This is a very, very important part of any consti-
20 tutional document. It means precisely what it says. It
21 means that the power granted in the Constitution shall be

1 granted to a branch of government, and it shall not be
2 granted and shall not be used by any other branch of the
3 government.

4 I am reminded here -- I am glad to see Judge
5 Dorsey in the chamber, because I am finally going to quote
6 Thomas Jefferson.

7 It was he, you will recall, who stated at one time,
8 discussing the amount of power in the departments, he
9 said:

10 "Free government is founded in jealousy and not
11 confidence; it is jealousy and not confidence which pre-
12 scribes limited constitutions, to bind down those whom we
13 are obliged to trust with power."

14 I can go to the Constitutional authority, Niles,
15 which is the only real interpreter of the Constitution of
16 Maryland --

17 THE CHAIRMAN: Your time has expired, Delegate
18 Gleason.

19 DELEGATE GLEASON: Just on that, the Scanlan magic,
20 even though he has faced the difficulties in this one,
21 succeeded on this amendment. It is an extremely important

1 provision in this Constitution.

2 THE CHAIRMAN: Any further discussion? Does
3 any other delegate desire to speak in favor of the amend-
4 ment? Does anyone desire to speak against?

5 Are you ready for the question?

6 The Clerk will ring the quorum bell.

7 Delegate Willoner.

8 DELEGATE WILLONER: Just one thing: This
9 language has never been construed by the Maryland Court
10 of Appeals, because the language is changed from the
11 present Constitution. The "ought" has been changed to
12 "shall."

13 THE CHAIRMAN: Delegate Dorsey.

14 DELEGATE DORSEY: Now that my good friend from
15 Montgomery County is talking like a Jeffersonian, I want
16 to say I am 100 percent with him.

17 THE CHAIRMAN: The question arises on the adop-
18 tion of Amendment No. 3. A vote Aye is a vote in favor
19 of the amendment. A vote No is a vote against.

20 Cast your vote.

21 Has every delegate voted?

1 Does any delegate desire to change his vote?

2 The Clerk will record the vote.

3 There being 67 votes in the affirmative and
4 49 in the negative, the motion is carried. The amend-
5 ment is adopted.

6 Are there any other amendments to section 3?
7 The Chair hears none.

8 We will proceed to a consideration of section 4.

9 Delegate Scanlan, do you desire to offer your
10 amendment P?

11 DELEGATE SCANLAN: Well, 4 is a hard point to
12 make in dice, but we will give it a try.

13 THE CHAIRMAN: The pages will distribute Amend-
14 ment P.

15 This will be Amendment 4. The Clerk will read
16 the amendment.

17 MR. QUILLEN: Amendment No. 4 to Committee
18 Recommendation No. R&P-2, by Delegates Scanlan and Moser:

19 On page 2, Section 4, Suspension of Laws, strike
20 out all of lines 13 through 17, inclusive.

21 THE CHAIRMAN: The amendment having been offered

1 by Delegate Scanlan and seconded by Delegate Moser, the
2 Chair recognizes Delegate Scanlan to speak to the amend-
3 ment.

4 DELEGATE SCANLAN: Briefly, Mr. Chairman, fellow
5 delegates:

6 Again we have in section 4 a provision that has
7 had perhaps some historical justification for its insertion
8 in the Constitution of 1867. I am not entirely sure, but I
9 believe that some of the actions of a pro-Union govern-
10 ment during the time when the State of Maryland was occupied
11 by the Federal troops probably explains the specific pro-
12 hibitions against the misuse of executive power by suspend-
13 ing laws.

14 I think it is perfectly clear that in a Consti-
15 tution which vests the legislative power entirely in the
16 legislature except as specifically prescribed in the
17 Constitution, such as the governor's pardon and veto, et
18 cetera, that under such provisions of that type a Constitu-
19 tion is unnecessary to have a specific prohibition of this
20 sort; that if a governor tried to suspend the law he ob-
21 viously would exceed his executive authority, and it would

1 be struck down by our courts.

2 I believe some people that favor retention of
3 language such as found in section 4 allude to the example
4 of Huie Long in his day. Perhaps a more recent Southern
5 governor may furnish another example, but at least, so far as
6 Huie Long was concerned, his suspension of the laws was under-
7 taken pursuant to authorities specifically vested in him by
8 a cowardly and timorous legislature; and I don't think
9 there is any fear that the legislature of this State will
10 ever come to such a task that they would surrender the
11 legislative authority to the governor. And indeed, if they
12 should do such an unthinkable thing, other provisions of
13 the Constitution would prohibit that from being done.
14 The courts would strike it down.

15 Again we have a section that once perhaps had
16 historical justification, but it is not needed; and again,
17 I urge you, let's keep out something that is unnecessary
18 and get this Constitution to a manageable size.

19 THE CHAIRMAN: Delegate Kiefer.

20 DELEGATE KIEFER: Mr. Chairman, ladies and
21 gentlemen of the Convention:

1 No comment.

2 THE CHAIRMAN: Are you ready for the
3 question? Is there any further discussion?

4 The Clerk will ring the quorum bell.

5 The question arises on the adoption of Amendment
6 No. 4. A vote Aye is a vote in favor of the amendment.

7 A vote No is a vote against.

8 Cast your votes.

9 Has every delegate voted?

10 Does any delegate desire to change his vote?

11 The Clerk will record the vote.

12 There being 97 votes in the affirmative and 18
13 in the negative, the motion is carried. The amendment is
14 adopted.

15 The Chair has no further amendments to section 4.
16 Are there any?

17 Delegate Scanlan,

18 DELEGATE SCANLAN: Mr. Chairman, may I take my
19 winnings and go home for a while?

20 THE CHAIRMAN: You may take your winnings, but you
21 may not go home.

1 Any further amendments to section 4?

2 Section 5.

3 Delegate Weidemeyer, do you desire to offer
4 your Amendment K?

5 DELEGATE WEIDEMEYER: I do, Mr. President.

6 THE CHAIRMAN: The pages will distribute Amend-
7 ment K.

8 This will be Amendment No. 5. The Clerk will
9 read the amendment.

10 MR. QUILLEN: Amendment No. 5 to Committee
11 Recommendation R&P-2, by Delegate Weidemeyer:

12 On page 2, Section 5, Limitation of Holding
13 Office, strike out all of lines 24 and 25 and insert in
14 lieu thereof the following:

15 "positions of notary public and delegate to a constitutional
16 convention shall not be considered offices of profit with-
17 in the".

18 THE CHAIRMAN: Is the amendment seconded?

19 DELEGATE BENNETT: Second.

20 THE CHAIRMAN: Delegate Bennett seconded the
21 amendment.

1 The Chair recognizes Delegate Weidemeyer to
2 speak to it.

3 DELEGATE WEIDEMEYER: Mr. President, Members
4 of the Convention:

5 Section 4 in R&P-2 is the same as recommended
6 by the committee, is the same as is now in the Constitution
7 of Maryland. It is provided fully that no person shall
8 hold at the same time more than one office of profit created
9 by the Constitutional laws of this State.

10 A few years back there was a question of whether
11 the position of notary public was an office of profit,
12 and many persons who held other offices at that time were al-
13 so notaries public.

14 The legislature then passed, or issued out
15 requests for constitutional amendment. It went before
16 the public, and they put in the second sentence of that,
17 that the position of notary public shall not be considered
18 an office of profit within the meaning of this section.

19 Mr. President, you and many of us are well aware
20 that under our present Constitution we had a case in the
21 Court of Appeals.

1 I happened to be on the other side at that time.
2 A lot of time was spent in determining whether members
3 of the House of Delegates could be, or members of the
4 State Senate could be members of the Constitutional Convention.
5 The Court of Appeals held under our present Constitution
6 that members of the legislature were not violating
7 the offices of profit clause if they held an office in
8 the Constitutional Convention.

9 I would think it well, therefore, Mr. President,
10 in order to remove that doubt, if this Constitution is
11 adopted, that we say in accordance with the Court of Appeals
12 decision in our Constitution that in addition to the
13 office of notary public, that the office of a delegate to the
14 Constitutional Convention is not an office of profit; and
15 therefore if this Constitution is adopted and another
16 Constitutional Convention is held thereafter, it will not
17 be necessary to determine that question, because you will
18 have determined then in this Constitution in accordance with
19 the Court of Appeals' decision under our present one
20 that the office of a delegate for a constitutional convention
21 is not considered strictly an office of profit. And I think

1 just by adding that little amendment there it will clarify
2 for us in years to come.

3 I urge the adoption of this amendment. I can see
4 no harm that it does to anybody, except to clarify in our
5 Constitution what the Court of Appeals has already ruled
6 as to our present one.

7 THE CHAIRMAN: Delegate Kiefer.

8 DELEGATE KIEFER: Mr. Chairman, ladies and
9 gentlemen of the Committee:

10 As far as this delegate is concerned, I would
11 have to agree that being a delegate to this Constitution
12 is not an office of profit.

13 Further I sayeth not.

14 THE CHAIRMAN: Does any other delegate desire
15 to speak in favor of the amendment?

16 Delegate Sickles.

17 DELEGATE SICKLES: Mr. Chairman, I have a parlia-
18 mentary inquiry.

19 I had ordered sometime ago an amendment
20 to this section, and I don't know whether you have it on
21 your desk, but it has not been delivered to me as yet.

1 THE CHAIRMAN: An amendment to this section?

2 DELEGATE SICKLES: Yes.

3 It apparently has not been reproduced as yet.

4 I discussed it late this afternoon. Mr. Benson
5 talked to me about 8:30 about it.

6 THE CHAIRMAN: We will check on it.

7 Does any other delegate desire to speak in
8 favor of the amendment?

9 Delegate Sherbow.

10 DELEGATE SHERBOW: I ask you to vote for this
11 amendment. This is one of the few times I find myself with
12 brother Weidemeyer.

13 I tried, along with other lawyers in that case,
14 the other side of that argument. We tried to convince
15 the Court of Appeals that under the highly technical as-
16 pects of our law, that holding membership in the Constitu-
17 tional Convention was not an office of profit. I assure you,
18 it was a very, very delicate constitutional problem, be-
19 cause in my own mind I wasn't too sure if certain groups were
20 prevented from running for this office that we would have had
21 a Constitutional Convention.

1 I am happy to say that the Court of Appeals
2 agreed with our side, and now we are holding this Constitu-
3 tional Convention.

4 Hopefully hereafter this problem won't arise.
5 I urge you to vote for this amendment.

6 THE CHAIRMAN: Does any delegate desire to
7 speak in opposition?

8 Delegate Nielson.

9 DELEGATE NIELSON: Mr. Chairman, I don't wish
10 to speak at this point in opposition, but rather ask a
11 question of the sponsor with respect to the language.

12 THE CHAIRMAN: Does any delegate desire to speak in
13 opposition?

14 Delegate Bothe.

15 DELEGATE BOTHE: Mr. Chairman, assuming that
16 this Convention wishes to retain the prohibition on dual
17 office holding -- and I think that is perhaps a foregone
18 conclusion, there is a wide question as to whether
19 various exceptions, and I think Constitutional Convention
20 delegate and notary public both have proven to be one,
21 should be placed in the Constitution as specific exceptions.

1 Certainly we do not want to legislate in the
2 Constitution, and there are many circumstances which may
3 arise in which the prohibition and the principle behind
4 it will not be applicable.

5 As I understand it, Delegate Sickles' amend-
6 ment will give the General Assembly the option to
7 exclude offices to which the principle should not be
8 applicable, and I suggest that we vote against the
9 amendment; and instead, give some latitude to the General
10 Assembly to exempt offices which should not properly be
11 constitutionally prohibited from the dual office holding
12 procedure.

13 It is for that reason that I arise to oppose the
14 amendment, and to suggest that we should not have particular
15 exceptions specified in the Constitution, but should allow
16 the General Assembly, which very wisely acted in the case of
17 the Constitutional Convention delegates, to decide in other
18 cases that there are overriding reasons why a public official
19 should be able to hold a dual office.

20 THE CHAIRMAN: Delegate Sickles, the Chair now
21 has not one, but three amendments which you have prepared

1 to this section. I take it that these are intended as
2 alternates?

3 Delegate Sickles.

4 DELEGATE SICKLES: Amendment AD would be my primary
5 and first amendment, then if that were to pass, then I
6 would be deleting the very language that Delegate Weidemeyer
7 is now attempting to have passed.

8 THE CHAIRMAN: If that should pass, what?
9 I am sorry.

10 DELEGATE SICKLES: If Amendment AD were to
11 pass, then I would offer Amendment AE, because that would
12 delete the second sentence, which is the sentence now
13 about to be amended if Delegate Weidemeyer's amendment is
14 adopted.

15 Then my A amendment would be a second
16 position, if my AD amendment were not adopted; so I would
17 be proposing AD as my primary and first amendment.

18 THE CHAIRMAN: The pages will please distribute
19 Amendment AD.

20 THE CHAIRMAN: For what purpose does Delegate
21 Chabot rise?

1 DELEGATE CHABOT: Parliamentary inquiry, Mr.
2 Chairman.

3 THE CHAIRMAN: State the inquiry.

4 DELEGATE CHABOT: Has our adoption of Committee
5 Report EB-2 prohibited us from providing for,
6 providing Constitutional status for notaries public?

7 THE CHAIRMAN: Are you speaking of Committee
8 Recommendation EB-2, or the committee report?

9 DELEGATE CHABOT: Committee Report EB-2.

10 THE CHAIRMAN: You mean EB-1?

11 DELEGATE CHABOT: I am sorry, I mean EB-1, yes.

12 THE CHAIRMAN: The Chair does not think so.

13 I am sorry. I shouldn't say that. I am not sure
14 j ust how you phrased your question.

15 Recommendation 5, contained in Committee Report
16 EB-1, provides that among other offices, notaries
17 public not be provided for in the Constitution.

18 This prevents any provision providing for notaries
19 public in the Constitution. It, of course, would not prevent
20 creation of such position by statute. I am not sure that
21 was your precise question.

1 DELEGATE CHABOT: My understanding of the
2 language in section 5 of R&P-2 is that the specific
3 reference to notaries public would be in effect a mandate
4 to create this office as a Constitutional office.

5 THE CHAIRMAN: The Chair would not think so,
6 Delegate Chabot. I think it would be read as though it had
7 said the position of notary public, if provided for by law,
8 shall not be considered an office of profit.

9 It may be that the Committee on Style would have
10 to make such amendment to make it clear.

11 Delegate Sickles, do you desire to speak to the
12 amendment -- amendment 5, not your own amendment, but
13 amendment 5.

14 DELEGATE SICKLES: If it is in order, Mr. Chair-
15 man, I would like to offer my amendment as a substitute
16 for amendment 5.

17 THE CHAIRMAN: Delegate Sickles, I don't think
18 it would be proper as a substitute.

19 For what purpose does Delegate Weidemeyer rise?

20 DELEGATE WEIDEMEYER: I want to answer Delegate
21 Chabot, and also to answer as to the substitution.

I would say to Delegate Chabot, under the Moser case and

1 the decision of the Court of Appeals an office of profit
2 and trust can arise either under the Constitution or the
3 laws of the State. So even though we have not made notary
4 public a constitutional office, if created by the legisla-
5 ture it could be an office of profit and trust, unless we
6 specifically say otherwise.

7 As to substituting Delegate Sickles' amendment --

8 THE CHAIRMAN: The Chair has already ruled it
9 may not be offered as a substitute.

10 Is there any further discussion of Amendment
11 No. 5?

12 Delegate Bamberger.

13 DELEGATE BAMBERGER: Mr. Chairman, I rise
14 to speak against the amendment, and I hope that
15 if what I have to say is not correct, that either
16 the Chairman of the Committee or some member of the
17 Committee will give this Committee of the Whole some guidance
18 on the intention of the Committee and the amendments that
19 are offered, so that we will not be required to spend the
20 entire night here debating and discussing matters which I
21 presume were debated and discussed in the committee

1 itself.

2 I speak against Amendment No. 5 because, as I
3 understand the comments on this floor, the Court of Appeals
4 has said that delegates to a Constitutional Convention are
5 not offices of profit. If that is so, if that is what
6 the court has held, I do not see why we must state it in
7 the Constitution.

8 If there is a reason to repeat in the Constitu-
9 tion the holding of the Court of Appeals that delegates
10 to a Constitutional Convention do not occupy offices of
11 profit, then I wonder why we are not stating here all of the
12 offices of profit or all of the offices which have been held
13 by the Court of Appeals not to be offices of profit.

14 I urge you to vote against the amendment, unless
15 the committee did think about this at some point and can offer
16 some assistance to those of us who are hearing about it for
17 the first time.

18 THE CHAIRMAN: Does any other delegate desire to
19 speak in favor of the amendment?

20 Does any delegate desire to speak in opposition?

21 Delegate Koss.

1 DELEGATE KOSS: Mr. Chairman, Members of
2 the Committee:

3 I rise in great trepidation to speak against
4 this. I think I was the only person who appeared
5 before the General Assembly at the time the enabling legis-
6 lation was being discussed and urged that members of the
7 General Assembly not be considered eligible to run as candi-
8 dates for the office of delegate to the Constitutional
9 Convention.

10 In action previously we have determined that
11 there be no conflict of interest in our judiciary.

12 We have prohibited lawyers from practicing law. We have
13 in our legislative article introduced something in terms of
14 a conflict of interest.

15 I am aware full well of the offices of profit
16 as determined by the General Assembly that are occupied by
17 delegates to the Constitutional Convention.

18 I consider this indeed an office of trust, and
19 I would hope that you would apply the same standards to future
20 Conventions and the delegates therein as you do to the
21 branches of our government.

1 Thank you.

2 THE CHAIRMAN: Is there any further discussion?
3 Are you ready for the question?

4 The Clerk will ring the quorum bell.

5 The question arises on the adoption of Amend-
6 ment No. 5. A vote Aye is a vote in favor of the amendment.
7 A vote No is a vote against.

8 Cast your votes.

9 Has every delegate voted? Does any delegate
10 desire to change his vote?

11 The Clerk will record the vote.

12 There being 43 votes in the affirmative and
13 67 in the negative, the motion fails. The amendment is
14 rejected.

15 Delegate Sickles, do you now desire to offer your
16 amendment AD?

17 DELEGATE SICKLES: I do, Mr. Chairman.

18 THE CHAIRMAN: The amendment has already been
19 distributed. It will be number 6.

20 The Clerk will read the amendment.

21 MR. QUILLEN: Amendment No. 6 to Committee

1 Recommendation No. R&P-2, by Delegate Sickles:

2 On page 2, section 5, Limitation of Holding
3 Office, in line 23 strike out the period and insert in lieu
4 thereof the following words:

5 ", except as may be provided by law."

6 THE CHAIRMAN: Is the amendment seconded?

7 DELEGATE GLEASON: I second.

8 THE CHAIRMAN: Delegate Gleason seconded.

9 The Chair recognizes Delegate Sickles to speak
10 to the amendment.

11 DELEGATE SICKLES: Mr. Chairman, fellow dele-
12 gates:

13 I hope I can cover what is really a long story in
14 just one or two sentences, but hope by making it brief
15 I do not give the problem less than its full consideration.

16 I hope you will bear with me long enough to
17 realize that there is a whole body of law now being
18 developed, particularly in those counties which are trying to
19 cooperate with their neighbor counties, by setting up the
20 intergovernmental agencies that we have provided for.

21 When we passed the recommendation of the Commit-
tee on Local Government one of the avenues opened up to

1 them was the development of regional bodies which will not
2 be independent of the governing agencies and will not be
3 independent of those office holders who have been elected
4 by the people.

5 We have had some problems in the past in
6 the metropolitan Washington area, and I think this has been
7 declared to be a national problem, in setting up what we call
8 "special purpose" agencies, who then have appointed heads,
9 who then are not really responsive and responsible to
10 the elected officials.

11 If we continue the prohibition as set out in
12 section 5, this is one area which will not be available to us,
13 the area of in effect having the elected officials setting
14 up a by-county or multiple county agency, and then appoint-
15 ing themselves to sit on these boards; so that in effect
16 they are making the basic decisions and the people
17 who have been elected are in turn making the basic decisions
18 which involves, really, part of the sovereignty of the
19 government to which they had been primarily elected.

20 In becoming aware of this problem a few years ago
21 when we were negotiating the Interstate Compact to set up the

1 transit report I reviewed all the cases. There was provided
2 to us a report, and you received it at one time, a report pre-
3 pared for the Constitutional Convention Commission; and you
4 will have to read through that to see the many times that
5 the question has been raised and notice the different deci-
6 sions that have been made, and you know, it is hard cases
7 that make poor law.

8 When we set up this absolute prohibition in the
9 Constitution then the courts find themselves in that rather
10 difficult spot of trying to fit this law to a particular
11 circumstance, and you have the rather interesting situation
12 where the councilman of Capital Heights was determined
13 by the Attorney General not to hold an office of profit, but
14 the councilman per se was held to hold an office of profit.

15 The cases are just full of these kind of torturous
16 roads that the courts had to follow in order to make a
17 decision in each case.

18 Now, with specific reference to the attempts of
19 the metropolitan Washington area to concern itself with its
20 sanitary problems, there has been some discussion about
21 abolishing the Washington Suburban Sanitary Commission.

1 There is a strong ground swell in favor of that.

2 Perhaps a better alternative would be to make the
3 governing officials those from Washington as well as the
4 counties, so that this special single-purpose agency should
5 still be subject to the will of the people.

6 If we were to pass this in its current form without
7 modification, without giving the legislature the authority to
8 recognize these kinds of problems, then it seems to me we
9 would be doing a grave injustice to people who were trying to
10 solve these regional problems in a very real and a very equit-
11 able manner.

12 I would hope and urge you to seriously consider
13 this amendment, and support it as really being in the
14 best interests of providing government on a regional basis
15 within the framework that is available to us.

16 THE CHAIRMAN: Delegate Kiefer.

17 DELEGATE KIEFER: Mr. Chairman, ladies and
18 gentlemen of the Committee:

19 I would have no objection to adding this language,
20 because I understand what the problems are that are raised
21 by Delegate Sickles.

1 In fact, he had discussed this with me earlier.
2 If this will cure it, frankly I have no objection myself.

3 THE CHAIRMAN: Any further discussion?

4 Delegate Nielson.

5 DELEGATE NIELSON: Mr. Chairman, I rise to offer
6 an amendment to the amendment of Mr. Sickles.

7 THE CHAIRMAN: Is the amendment printed?

8 DELEGATE NEILSON: No, sir.

9 It is the same language, just a matter of striking
10 two more lines, to perhaps clarify it.

11 THE CHAIRMAN: What is the amendment?

12 DELEGATE NEILSON: It would be to strike out all
13 of the language in line 23 through 26, and then add the
14 words ", except as may be provided by law.", as we have
15 it in this amendment.

16 THE CHAIRMAN: You mean all of line 23, or do you
17 mean all of line 23 after the period?

18 DELEGATE NEILSON: As we have it here, strike
19 out the period in line 23, and the last sentence of the
20 section, beginning with "position of notary public."

21 THE CHAIRMAN: Delegate Sickles, that, in effect,

1 is a combination of your amendments AE and AD, is it not?

2 DELEGATE SICKLES: Yes. I was prepared to offer
3 that next. If it is permissible to combine them, I would
4 be happy to do so.

5 THE CHAIRMAN: Delegate Neilson, Delegate
6 Sickles has another amendment which would accomplish what
7 you want. Can you hold your motion, and then vote on one and
8 then the other?

9 DELEGATE NEILSON: I suggest it is 20 minutes after
10 10, and if we go through each and accomplish the same
11 purpose, wouldn't it be wiser to get to the issue and decide
12 it now?

13 THE CHAIRMAN: Very well.

14 Delegate Sickles, do you desire to modify your
15 Amendment 6 to read as follows:

16 On page 2, section 5, Limitation of Holding Office,
17 in line 23 strike out the period and all of lines 24, 25 and
18 26, and insert in lieu thereof the following words:
19 ", except as may be provided by law."?

20 DELEGATE SICKLES: I do, Mr. Chairman.
21

1 THE CHAIRMAN: Is there any objection to the
2 modification?

3 Delegate Gleason.

4 DELEGATE GLEASON: Mr. Chairman, while the
5 mover of the motion is in such a congenial mood --

6 THE CHAIRMAN: Is there any objection to the
7 modification?

8 There is no objection.

9 Delegate Gleason.

10 DELEGATE GLEASON: I wonder if the sponsor of
11 the amendment would also eliminate the word "except". I
12 think that that is his intention.

13 As I understand his amendment, and as I am
14 supporting it, he is just indicating that what is an office
15 of profit should be declared by the General Assembly and
16 not that the General Assembly should declare that
17 it would be permissible to have dual offices for profit.

18 THE CHAIRMAN: Delegate Gleason, the Chair
19 doesn't understand the purpose to be accomplished by
20 deleting the word "except."

21 Will you explain it?

1 DELEGATE GLEASON: Mr. Chairman, if the word
2 "except" stays in the amendment, then as I read
3 the amendment, if it is approved and added to this
4 sentence, it would provide that no person shall hold more
5 than one office of profit, except as may be provided by law,
6 which would give the General Assembly the power to allow in
7 certain cases people to hold two offices of profit.

8 I don't think that is the sponsor's intention, and
9 therefore, if he removed and eliminated the word "except" it
10 will carry out what I think is his intention.

11 THE CHAIRMAN: How would you understand the
12 sentence to be construed if you took out the word "except"?

13 DELEGATE GLEASON: If we took out the word "ex-
14 cept", then I would say that the General Assembly has
15 within its power the ability and the authority to define what
16 is an office of profit, and that is what has been the
17 troublesome thing over the years.

18 THE CHAIRMAN: I take it the difference is the
19 amendment as proffered would mean that two offices could not
20 be held unless the General Assembly provided otherwise,
21 and as you suggest it be changed, it would provide that
two offices could not be held if the General Assembly

1 so provided. Is that essentially the difference, Delegate
2 Gleason?

3 DELEGATE GLEASON: Yes, sir.

4 THE CHAIRMAN: Delegate Sickles, do you under-
5 stand the proposal?

6 DELEGATE SICKLES: I understand the colloquy,
7 but my precinct over here doesn't accept it. I would
8 like to go along with them. I think we would probably get
9 to the same place, but rather than get involved in declaring
10 or trying to say something is not an office of profit when
11 as a matter of fact it is, I think we ought to recognize
12 that it is; but provide for the limited exceptions where
13 you might be able to hold two at the same time.

14 THE CHAIRMAN: Very well.

15 Is there any further discussion of the amendment?

16 Delegate Burdette.

17 DELEGATE BURDETTE: Mr. Chairman, I rise for a
18 point of clarification.

19 Is it the intent of the mover, as I would
20 understand this arrangement, to place the principle of
21 separation of powers, which has now been removed by the

1 elimination of section 3 -- to carry it in section 5?
2 Is it the intention to place it entirely within the hands
3 of the General Assembly?

4 I am most sympathetic with the problem that
5 Delegate Sickles has, but there are other problems. I do
6 not see why the General Assembly --

7 THE CHAIRMAN: Let's get the answer to your
8 question first.

9 DELEGATE BURDETTE: I would like to get into
10 such a problem, such problem as would permit the President
11 of the Senate to be Secretary of State.

12 THE CHAIRMAN: Delegate Sickles, do you understand
13 the question?

14 DELEGATE SICKLES: I understand the question.
15 It is certainly not my intention to try to prejudge
16 what specific cases the legislature may apply this to. I am
17 persuaded, however, that they would apply it only in those
18 cases where it would serve a useful purpose. I am sure
19 you are not going to get the President of the Senate
20 acting as Secretary of State.

21 THE CHAIRMAN: I take it the question directed

1 to you was, was it the intent of the amendment to leave
2 the decision of this question, that is, whether one person
3 could hold more than one office of profit, to the determina-
4 tion of the General Assembly?

5 The answer is --

6 DELEGATE SICKLES: -- Yes.

7 THE CHAIRMAN: Delegate Burdette, do you have
8 a further question?

9 DELEGATE BURDETTE: I would say, Mr. President,
10 I think this is a very dangerous departure from the
11 principle of separation of powers in order to face a
12 particular and specific problem; that we are legislating
13 here in a fashion that may be most undesirable.

14 THE CHAIRMAN: Does any other delegate desire
15 to speak? Is there any further discussion?

16 Are you ready for the question?

17 The clerk will ring the quorum bell.

18 The question arises on the adoption of Amendment
19 No. 6, as modified. A vote Aye is a vote in favor of the
20 amendment. A vote No is a vote against.

21 Cast your votes.

1 Has every delegate voted? Does any delegate
2 desire to change his vote?

3 The Clerk will record the vote.

4 There being 75 votes in the affirmative and
5 40 in the negative, the motion is carried. The amendment
6 is adopted.

7 I take it, Delegate Sickles, that you will not
8 now offer Amendment AF?

9 Delegate Sickles?

10 DELEGATE SICKLES: That is correct, Mr. Chairman.

11 THE CHAIRMAN: Thank you.

12 The Chair has no other amendments to section
13 5. Are there any others?

14 If not, we will proceed to a consideration of
15 amendments after section 5.

16 Delegate Vecera, do you desire to offer your
17 amendment?

18 DELEGATE VECERA: Yes, Mr. Chairman.

19 THE CHAIRMAN: The pages will distribute Amendment
20 A. This will be Amendment No. 7. The Clerk will read the
21 amendment.

1 MR. QUILLEN: Amendment No. 7 to Committee
2 Recommendation No. R&P-2, by Delegates Vecera and Ritter:

3 On page 2, following Section 5, Limitation of
4 Holding Office, add the following new section:

5 "Section _____. Disqualification for Office.

6 "No person who advocates the overthrow of the
7 government of the United States or of the State
8 through force or violence shall be eligible to hold any
9 elective or appointive office or any other position of
10 the State or of any county, municipal corporation, or poli-
11 tical subdivision of the State. The General Assembly
12 shall provide by law for the enforcement of this section."

13 THE CHAIRMAN: The amendment having been offered
14 by Delegate Vecera and seconded by Delegate Ritter, the
15 Chair recognizes Delegate Vecera.

16 DELEGATE VECERA: Mr. Chairman, fellow dele-
17 gates:

18 I think this is a most important and serious
19 matter. I hope the lateness of the hour will not affect the
20 outcome and the hope of this in debate.

21 I think the amendment is perhaps self-explanatory.

1 It is already contained in the Constitution, Article XV,
2 section 11. The language has been changed somewhat, but
3 nevertheless the intent still remains.

4 Together with me co-sponsor, we feel that language
5 similar to this ought to be retained in the Constitution,
6 and that the last sentence provided in the amendment would
7 grant to the legislator the opportunity to allot
8 some type of constitutional language, or some language
9 which would carry the intent and which would be constitu-
10 tional.

11 And we feel, rather than belabor the point,
12 before we hear any questions on the matter, I would rather
13 defer to Delegate Ritter to see if he has anything
14 further to say in the matter, Mr. Chairman. He is my co-
15 sponsor.

16 THE CHAIRMAN: Delegate Kiefer.

17 DELEGATE KIEFER: Mr. Chairman, ladies and
18 gentlemen of the committee:

19 I am frank to say that I will have to oppose this
20 amendment. It may appear all right on its face, but I
21 believe it runs into areas that the federal government pre-
empted.

1 I believe it may be unconstitutional.

2 Certainly it is very vague, and I am not at all
3 sure how enforceable it is. I believe it is a matter that
4 is better left to the legislative action and is not a part
5 of this Constitution.

6 I just don't believe this is the kind of
7 thing that we want in here, even though in principle I would
8 have to agree with you as to its general concepts. But I
9 don't believe it is definite enough, and I believe it runs in-
10 to areas where we might run into unconstitutional effects as
11 far as the Federal government is concerned.

12 I hope you will reject this because of the
13 difficulties involved.

14 THE CHAIRMAN: Delegate Ritter.

15 DELEGATE RITTER: Mr. Chairman, I am not going
16 to belabor the subject tonight. It is very
17 plain. As Delegate Scanlan said before when we were delet-
18 ing section 4, probably at that time the Federal troops
19 were in the court house. This is not trying to keep the
20 Federal troops out, but rather those who do not believe
21 in our form of government out of office.

1 Vote on whether you care to put this in or
2 reject it. I say it is there before you. Make up your
3 own minds.

4 We do not, I do not, nor my delegate friend who
5 helped sponsor this does not believe that those who advocate
6 the overthrow of our government or the Federal government
7 should hold an office.

8 DELEGATE FOX: Mr. Chairman.

9 THE CHAIRMAN: Delegate Fox.

10 DELEGATE FOX: Mr. Chairman, I would like to
11 ask a question of the sponsor of the amendment.

12 THE CHAIRMAN: Delegate Ritter, do you yield to
13 a question?

14 DELEGATE RITTER: Yes.

15 DELEGATE FOX: How do you envision that the
16 General Assembly should provide by law? Do you mean
17 that they should prescribe an oath?

18 DELEGATE RITTER: No. I think it would be
19 unconstitutional. I think they could set up other
20 qualifications.

21 In other words, then, if the people by their

1 own actions advocate the overthrow of the State government
2 or the Federal government, I don't think you need an oath.
3 I don't think an oath would mean anything to those people.

4 I think if they advocate by force or violence
5 that they overthrow the Federal government, I don't think you
6 need an oath.

7 DELEGATE FOX: I don't think an oath would mean
8 anything to those people, either, but how is the
9 General Assembly going to provide by law? Is the General
10 Assembly going to determine whether or not a person
11 advocates the overthrow of the government?

12 THE CHAIRMAN: Delegate Ritter.

13 DELEGATE RITTER: I don't think that would be
14 hard for our legislators. I think if they advocate the
15 overthrow of our government by force or violence I think it
16 would be very evident to you and I and to all of the
17 legislators. I think they could set up qualifications.
18 There are very able lawyers in that body, and I feel
19 that they can do that.

20 THE CHAIRMAN: Does any other delegate desire to
21 speak in opposition?

1 Delegate Blair.

2 DELEGATE BLAIR: Mr. Chairman, I think the
3 oath itself accomplishes the whole philosophy that is pro-
4 mulgated by the advocates of this amendment. I think that
5 the oath of office is an affirmative position, that
6 the affiant will support the Constitution of the United States,
7 the Constitution of the State of Maryland and the laws there-
8 of, and by reason of taking this position affirmatively
9 I certainly don't think that the amendment means anything.

10 I think it is fully covered in the oath of
11 office, and it is allocated specifically only to public
12 office of profit or trust, by appointment or by election.

13 I think the oath is all encompassing, and it does
14 the very thing that the amendment intends to do.

15 THE CHAIRMAN: Further discussion?

16 Delegate Grant.

17 DELEGATE GRANT: I have a question to address
18 to Delegate Ritter.

19 THE CHAIRMAN: Does any other delegate desire to
20 speak?

21 If not, Delegate Ritter, will you take the floor

1 and respond to a question?

2 DELEGATE RITTER: I will attempt to.

3 THE CHAIRMAN: Delegate Grant.

4 DELEGATE GRANT: Delegate Ritter, it would
5 appear that the last sentence of your proposed amendment
6 is almost a bill of attainder. Would you be willing to
7 accept an amendment to your amendment, to strike out
8 the last sentence, which I think would get you past
9 that Constitutional impediment?

10 THE CHAIRMAN: Delegate Ritter.

11 DELEGATE RITTER: Wait until I talk to my other
12 constitutional lawyer. If we get another vote, we will
13 knock it out.

14 THE CHAIRMAN: Does that mean you modify the
15 amendment?

16 DELEGATE RITTER: Yes, by knocking out the last
17 sentence.

18 THE CHAIRMAN: Is there any objection?

19 The Chair hears none.

20 The amendment is modified by striking the
21 last sentence, beginning on line 11, and all of lines 12

1 and 13.

2 Does any other delegate desire to speak to the
3 amendment?

4 Delegate Willoner.

5 DELEGATE WILLONER: I have a question for
6 either of the makers of the amendment.

7 THE CHAIRMAN: Take your choice.

8 DELEGATE WILLONER: Delegate Vecera.

9 THE CHAIRMAN: Delegate Vecera, will you take the
10 floor to yield to a question?

11 DELEGATE VECERA: Yes.

12 THE CHAIRMAN: Delegate Willoner.

13 DELEGATE WILLONER: This provision as stated is
14 absolutely inoperable. Unless you concede an act done by
15 an officer who advocates the violent overthrow of our country
16 to be an illegal act -- for example, if a judge advocated the
17 overthrow of the government, would any of his decisions be
18 any good? Is that how you plan to enforce this?

19 THE CHAIRMAN: Delegate Vecera.

20 DELEGATE VECERA: No.

21 THE CHAIRMAN: Delegate Willoner.

1 DELEGATE WILLONER: How do you plan to enforce
2 it then?

3 THE CHAIRMAN: Delegate Vecera.

4 DELEGATE VECERA: I think by virtue of eliminat-
5 ing the last sentence, that would be the intent of the
6 enabling act. In order to enforce it, the last sentence,
7 by virtue of having --

8 THE CHAIRMAN: Delegate Vecera, are you
9 speaking of the sentence that was deleted?

10 DELEGATE VECERA: Yes, sir.

11 I am trying to answer Delegate Willoner's ques-
12 tion.

13 THE CHAIRMAN: Hasn't that sentence been deleted?

14 DELEGATE VECERA: It has been deleted.

15 I am going further into the matter. I think it
16 would do no harm to have the remainder of the amendment,
17 Delegate Willoner, in the Constitution. I don't think
18 it is doing any harm.

19 How it will be effective or effectuated by the
20 General Assembly is a matter for the General Assembly.

21 THE CHAIRMAN: Delegate Willoner.

1 DELEGATE WILLONER: Well, as I understand your
2 answer, is it true this is to have no effect?

3 THE CHAIRMAN: Delegate Vecera.

4 DELEGATE VECERA: As I understand it, Delegate
5 Willoner, this amendment, prior, had an oath to go
6 with the amendment that was stricken in the recent case of
7 the University of Maryland professor.

8 Let me read you a sentence. Maybe it will clear
9 up the matter of why we want it in.

10 "In the recent case of Whitehill v. Elkins, 36
11 Law Week 4006, November 6, 1967, the Supreme Court of
12 the United States held that the sworn statement
13 required by the State of the plaintiff as a condition
14 precedent to his taking a teaching job at the University
15 of Maryland was unconstitutional under the United States
16 Constitution because it impinged upon freedoms guaranteed
17 by the first amendment. The Supreme Court did not indicate
18 that any such required statement would be unconstitutional
19 but found that the statement required of Whitehill was bad
20 because it was so vague that it did not permit a man of com-
21 mon intelligence to know specifically what was encompassed

1 in his oath. The majority of the Court found that the form
2 of oath could be interpreted as incorporating by reference
3 the more specific language of the Ober Law and that when so
4 read the oath impinged upon rights of free speech protected
5 by the first amendment.

6 What I am trying to say, Delegate Willoner, is
7 that possibly the General Assembly could come up, in the
8 future, with some kind of language that would protect
9 our rights, in order that people such as this would not
10 be able to hold office.

11 THE CHAIRMAN: Delegate Willoner, do you have
12 a further question?

13 DELEGATE WILLONER: For the purpose of the
14 legislative history, other than as a statement of principle,
15 this is not to have any operative effect? It is to be non-
16 justiciable?

17 THE CHAIRMAN: Delegate Vecera.

18 DELEGATE VECERA: I hope it will have an opera-
19 tive effect.

20 DELEGATE WILLONER: Would you state how it will
21 have an operable effect?

1 DELEGATE VECERA: I think that would be entirely
2 up to the General Assembly, or perhaps the judiciary.

3 I defer to Delegate Grant.

4 THE CHAIRMAN: Delegate Grant, do you have a
5 question?

6 DELEGATE GRANT: I had a comment to that, which
7 I think should be made, since I suggested they make the
8 change.

9 THE CHAIRMAN: Very well.

10 DELEGATE GRANT: I intend to vote for this, but
11 I wouldn't want anybody to vote for it with the thoughts
12 that it could not be enforced. It is very enforceable.
13 It is part of the Bill of Rights. I would remind you
14 that the Bill of Rights is what is used to interpret the
15 Constitution.

16 Now, the Constitution provides for the
17 General Assembly to create offices, and in creating
18 offices they claim they will be filled by people who are eli-
19 gible to fill the offices.

20 Now, if you have a case of someone who is a
21 subversive, who has to be removed from office, all you have

1 to do is go to the bill of rights, which indicates the
2 person is not eligible to hold office, and he can be re-
3 moved.

4 THE CHAIRMAN: Does any other delegate desire
5 to speak in opposition?

6 Delegate Sherbow.

7 DELEGATE SHERBOW: I desire to speak in opposi-
8 tion.

9 THE CHAIRMAN: Go ahead.

10 DELEGATE SHERBOW: Ladies and gentlemen:
11 The hour is late, and this is so important that I just
12 feel that even though one would like to support this kind
13 of a general statement, we have to recognize what we are
14 doing.

15 History shows this. Mr. Ober, one of the out-
16 standing members of the bar, after a brilliant address before
17 the State Bar Association on this entire subject, prepared a
18 law. It was very very carefully worked out. This
19 was then known and still is, as the Ober law. It covers
20 this entire field of subversive activity.

21 This law came before the court on the question

1 of whether or not it was constitutional. The lower court
2 held it was not constitutional.

3 I know. I wrote that opinion.

4 The case then went to the Court of Appeals,
5 and the Court of Appeals decided there was no issue, no
6 justiciable issue before it, because nobody was hurt.
7 Nobody had been hurt in any way. Two ladies working at the
8 Enoch Pratt library had decided they would not take
9 this oath and had resigned, but nobody had been hurt.
10 And the Court of Appeals said, "We will not pass on
11 this question."

12 The Supreme Court, on a writ, refused to hear
13 the matter. Thereafter the United States, through the
14 Congress, passed what is known as the Smith Act, dealing
15 with the entire subject of subversives and subversive
16 activities.

17 The Smith Act then was held to be pretty generally
18 pre-emptive of this entire field.

19 In the 19 years that have elapsed since that
20 decision by our Court of Appeals we have had one, sometimes
21 two members of the Attorney General's office acting in this

1 field. There has never been an arrest in the State of
2 Maryland, nor has anybody ever been charged with violating
3 the Ober Act.

4 Recently one of the professors brought to Mary-
5 land refused to take the oath, and the United States
6 Supreme Court had before it, not the original oath under
7 the Ober Law, but a modification, which the attorney general
8 had attempted to work out, based on decisions theretofor
9 handed down by the Supreme Court.

10 THE CHAIRMAN: You have one-half minute, Delegate
11 Sherbow.

12 DELEGATE SHERBOW: And under those circumstances,
13 the oath could not be required.

14 Much as all of us feel on this subject, we
15 don't want to be ever held to be in favor of people who want
16 to overthrow the government. But this is not a provision
17 that belongs in the Constitution.

18 The legislature has acted. If they can find a
19 way to act again, you and I know that they will;
20 and this is the way to meet this particular problem - when
21 and if it arises.

1 This, as it now reads, will accomplish absolutely
2 nothing. Therefore, I shall vote against the amendment.

3 THE CHAIRMAN: Any other discussion?

4 Are you ready for the question?

5 The Clerk will ring the quorum bell.

6 The question arises on the adoption of Amendment
7 No. 7. A vote Aye is a vote in favor of the amendment.
8 A vote No is a vote against.

9 Cast your votes.

10 Has every delegate voted? Does any delegate
11 desire to change his vote?

12 The Clerk will record the vote.

13 There being 17 votes in the affirmative and 92
14 in the negative, the motion fails. The amendment is re-
15 jected.

16 The Chair desires to correct the record in one
17 particular which has been called to my attention.

18 Delegate Sickles, would you please get before you
19 Amendment 6 and your modification?

20 The Chair read the modification as striking out
21 all of lines 24, 25 and 26.

1 I assume you intend also to strike the word "the"
2 in line 23?

3 DELEGATE SICKLES: That is correct.

4 THE CHAIRMAN: May we consider that a modifica-
5 tion?

6 DELEGATE SICKLES: You may, Mr. Chairman.

7 THE CHAIRMAN: Is there any objection?

8 Amendment 6 is corrected to read accordingly;
9 strike out the word "the" in line 23.

10 The Chair would like to move on, but I believe
11 the next amendment is one that may take some time in discus-
12 sion or explanation, and therefore the Chair regretfully
13 recognizes Delegate Powers.

14 DELEGATE POWERS: Mr. Chairman, I move the
15 Committee of the Whole rise and report it has not yet com-
16 pleted consideration of Committee Recommendation R&P-2.

17 THE CHAIRMAN: Is there a second?

18 (Whereupon, the motion was seconded.)

19 THE CHAIRMAN: All in favor, signify by saying
20 Aye; contrary, No.

21 The Ayes have it. It is so ordered.

1 (Whereupon, at 10:45 p.m., the Committee of the
2 Whole rose, and the Convention reconvened.)

3 (The mace was replaced by the Sergeant at Arms.)

4 THE PRESIDENT: The Convention will please
5 come to order.

6 On behalf of the Committee of the Whole the Chair
7 reports that the Committee has had under consideration
8 Committee Recommendation R&P-2, that it still has it under
9 consideration, and desires leave to sit again.

10 For what purpose does Delegate Schloeder rise?

11 DELEGATE SCHLOEDER: Mr. Chairman, I rise on an
12 announcement, if it is in order at this time.

13 THE PRESIDENT: You may make the announcement.

14 DELEGATE SCHLOEDER: Delegate Scanlan has asked me
15 to announce that immediately upon adjournment there will be
16 a meeting in the basement of Shaw House, the Rules Committee
17 office, southwest corner, for all those who would
18 like to further investigate the laws of mathematical proba-
19 bility.

20 THE CHAIRMAN: Any announcements by committee
21 chairmen?

1 Delegate Penniman.

2 DELEGATE PENNIMAN: Mr. Chairman, the Committee
3 on Style and Drafting will meet tomorrow morning at 8:30.

4 THE PRESIDENT: Any other announcements by
5 committee chairmen?

6 (No response.)

7 Any announcements by other persons?

8 (No response.)

9 THE PRESIDENT: The Chair recognizes Delegate
10 Powers.

11 Just a second.

12 All persons not present at roll call may indicate
13 their presence now on supplemental roll call.

14 The Clerk will record the supplemental roll call.

15 The Chair recognizes Delegate Powers.

16 DELEGATE POWERS: Mr. President, I move we adjourn
17 until 10 o'clock tomorrow morning.

18 THE PRESIDENT: Please note that the motion is
19 to adjourn until 10 tomorrow morning, but please also keep
20 in mind that it will be necessary, and we will have an
21

1 evening session tomorrow.

2 All in favor, signify by saying Aye; contrary,
3 No.

4 The Ayes have it. It is so ordered. .

5 (Whereupon, at 10:47 p.m., the Convention ad-
6 journed, to reconvene at 10:00 a.m. of the following day.)

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